



आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क:
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,

द्वितीय तल, जी एस टी भवन / 2nd 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



सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या Appeal / File No.	मूल आदेश नं / O.O. No.	दिनांक / Date
	V2/167/RAJ/2016	33/ADC/BKS/2015	16.03.2016

ख अपील आदेश संख्या (Order-In-Appeal No.):

RAJ-EXCUS-000-APP-142-2017-18

आदेश का दिनांक / Date of Order:	18.12.2017	जारी करने की तारीख / Date of issue:	20.12.2017
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कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ आयुक्त/ आयुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क सेवाका, राजकोट / जामनगर / गण्डधाम। द्वारा उपरोक्तित जती मूल आदेश से सूचित।

Arising out of above mentioned O/O issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandh-Dham

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name&Address of the Appellants & Respondent :-

M/s. D & J Enterprise Highway Road, Near Ganesh Mandir Surad Karadi, Dist : Dwarka - 361 345

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके से 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 सेवाका अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अन्तर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अन्तर्गत निम्नलिखित उपाय 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 fees 10/-

(B) विशेष मूल्यांकन से सम्बन्धित जती मामले सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाका अपीलीय न्यायाधिकरण की विशेष पीठ, ईस्ट ब्लॉक नं 2, आर के पुरम, नई दिल्ली, को की जायी 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.

(C) उपरोक्त परिच्छेद 1(a) में बतलाए गए अपीली के अलावा शेष सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाका अपीलीय न्यायाधिकरण (निस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहामनी भवन अर्थात् अहमदाबाद, 360015 को की जानी चाहिए।

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380015 in case of appeals other than as mentioned in para- 1(a) above

(D) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अन्तर्गत निर्धारित किए गये फॉर्म EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की सीमा, व्याज की सीमा और अलावा तथा जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये से अधिक है तो अलग 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का अग्रतन, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सर्वोच्च श्रेणी के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का अग्रतन, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वयंसेवक आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये 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 demanded/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/-

(E) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अन्तर्गत सेवाका नियमावली, 1994, के नियम 9(1) के तहत निर्धारित फॉर्म S.T.5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करे (उपरोक्त दो एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाका की सीमा, व्याज की सीमा और अलावा तथा जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये से अधिक है तो अलग 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का अग्रतन, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सर्वोच्च श्रेणी के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का अग्रतन, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वयंसेवक आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये 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 दावे की गयी अपील, सेवाकर नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित फॉर्म S.T.-7 में की जा सकती एवं उसके साथ आवश्यक केन्द्रीय उत्पाद शुल्क अथवा आदक (अपील), केन्द्रीय उत्पाद शुल्क द्वारा जारी आदेश की प्रतियाँ संलग्न की (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आदकन द्वारा संशुद्ध अनुकूल अथवा उपयुक्त, केन्द्रीय उत्पाद शुल्क सेवाकर, को अपीलीय न्यायाधिकरण को अपील दावे 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 Form 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 (सेस्टैट) के प्रति अपील 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 मात्र के 10 प्रतिशत (10%), जब मात्र एवं जुर्मोन विवादित है, या जुर्मोन, जब केवल जुर्मोन विवादित है, का भुगतान किया जाए, बशर्ते 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 "जमा किए गए शुल्क" में प्रिवल शामिल है।
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेस्टैट जमा की गयी राशि
(iii) सेस्टैट जमा नियमवली के नियम 6 के अंतर्गत देय रकम
- बशर्ते वह कि इस धारा के प्राधान्य वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचारणीय रखाने गयीं एवं अपील को लागू नहीं होगी।
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 be 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 को पुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षण प्राधिकर निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रावण पारक के अंतर्गत अथवा एडिड, भारत सरकार, पुनरीक्षण आवेदन हेतु, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, लखत 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 मात्र के किसी नुकसान के मामले में, जहां नुकसान किसी मात्र 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 मात्र के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में मात्र 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 मात्र के विनिर्माण में प्रयुक्त कच्चे मात्र पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (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 on 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 मात्र 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 इम्पोर्ट केवल इस अधिनियम एवं इसके विभिन्न प्रावणों के तहत माध्य की गयी है और ऐसे आदेश जो आदकन (अपील) के द्वारा वित्त अधिनियम (सं. 2), 1998 की धारा 109 के द्वारा निर्यात की गई तरीक अथवा समायाधिधि पर का बंद में परिणत किए गये 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 फॉर्म संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमवली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संशेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आवेदन की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की उदाहरणी के संशेष 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 प्रत्यागनी की जानी चाहिए।
जहां 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 नवीं मूल आदेश का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त दंग में किया जाना चाहिए। इस तथ्य के होने हुए भी की निष्ठा पूर्ण कार्य से बचने के लिए परामर्शित अपीलीय न्यायाधिकरण को एक अपील या केसिंग सरकार को एक आवेदन किया जाना 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, not withstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scripioria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
(E) ब्याजसंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुकूल मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट लगा होना चाहिए। / One copy of application of 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) नियमवली, 1982 में उचित एवं अन्य संबंधित मामलों को शामिल 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 प्रावणों के लिए, अपीलीय विचारणीय 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. D & J Enterprise, Highway Road, Near Ganesh Mandir, Suraj Karadi, Dist. Dwarka 361 345 (*hereinafter referred to as 'the appellant'*) holding Service Tax Registration under the category of "Transport of Goods by Road" and "Supply of Tangible Goods", has filed the present appeal against Order-In-Original No. 33/ADC(BKS)/2015 dated 16.03.2016 (*hereinafter referred to as 'the impugned order'*) passed by the Additional Commissioner, Central Excise and Service Tax, Rajkot (*hereinafter referred to as 'the lower adjudicating authority'*).

2. Briefly stated the facts of the case are that Audit on reconciliation of the income shown in their books of account with the taxable income mentioned in ST-3 returns of the appellant found had short payment of Service Tax of Rs. 7,51,972/- during 2010-11.

2.1 Show Cause Notice No.V.ST/AR-IV/DIV-JMN/ADC(SS)/189/2014-15 dated 15.12.2014 was issued demanding Service Tax of Rs. 7,51,972/- under section 73(1) of the Act, along with interest under section 75 of the Act and proposing penalty under Sections 76, 77 and 78 of the Act. The Show Cause Notice was adjudicated by the lower adjudicating authority, vide the impugned order confirming demand of Service Tax of Rs. 7,51,972/- under Section 73(1) of the Act, ordering recovery of interest under Section 75 of the Act and imposing penalty of Rs. 7,51,972/- upon appellant under Section 78 of the Act, with option that Service Tax along with interest is paid within 30 days from the receipt of the impugned order the benefit of reduced penalty of 25% of Service Tax demanded would be available. Penalty of Rs. 10,000/- under Section 77 of the Act was also imposed, whereas penalty imposed under Section 76 of the Act was dropped.

3. Being aggrieved with the impugned order, the appellant preferred the present appeal, *inter alia*, on the ground that there is no mention of specific taxable service/classification while demanding and confirming tax and therefore demand is not sustainable and in support of this contention they relied upon the decision of the Hon'ble Tribunal in the case of M/s. Shubham Electricals reported as 2015 (40) S.T.R. 1034 (Tri.-Del.) and of Hon'ble Delhi High Court vide 2016(5)TMI 1055, that the impugned order demanding Service Tax without specifying the service, is not sustainable.

4. Personal hearing in the matter was attended by Shri Vikas Mehta, Consultant wherein he requested for condonation of delay of 16 days and requested for one-month time to submit written submission. Next hearing in the matter was held on 03.10.2017 wherein he reiterated the grounds of appeal and also submitted a written submission dated 21.09.2017 *inter alia*, stating that Show Cause Notice No. V.ST/15-25/Adj/2011 dated 15.04.2011 issued for earlier period has still not been adjudicated; that they provided local transportation service to M/s. Tata Chemicals Ltd; that they prepared bills etc. with the aid of the employees of M/s. Tata Chemicals Ltd. and those were retained by them only; that due to change of staff, they were unable to obtain those documents; that the Department passed the order confirming demand without spelling out the taxable category; that there is a delay of 16 days in filing appeal on account of the fact that they had to change their counsel owing to his inability to draft the appeal in time and for this they relied on the case laws of Shree Royal Polyplast Industries reported as 2017 (347) ELT 14 (Guj.) and Mst. Katiji and others as reported as 1987 (28) ELT 185 (S.C.).

FINDINGS:-

5. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum, as well as oral and written submissions made by the appellant. I find that the appellant has filed the appeal delaying it by 16 days with request to condone the delay on the ground that they had to change their counsel owing to his inability to draft appeal in time. I condone delay under Section 35 of the Act as it is for 16 days only, whereas delay of 30 days is allowed. I, therefore, propose to decide issue. The issue to be decided in the present appeal is as to whether the appellant is liable to pay Service Tax of Rs. 7,51,972/- for the year 2010-11 in the facts and circumstance of the case.

6. I find that Show Cause Notice has alleged short payment of Service Tax of Rs. 7,51,972/- for the period 2010-11 from October-2010 to March-2011. Computation of the Service Tax has been made on the basis of the so-called reconciliation of the income for the year 2010-11 shown in Balance Sheet with ST-3 returns filed by the appellant.

6.1 On reconciliation of the income shown in the profit and loss account and balance sheet for the year 2010-11, Audit noticed that the appellant has

short paid Service Tax, whereas, the appellant argued that there is no specific mention of category of the taxable service in the Show Cause Notice and thus the demand of Service Tax without specifying the category of service the demand is not sustainable and relied upon Para 11 of the decision of the Hon'ble CESTAT in the case of M/s. Shubham Electricals which reads as under :-

"11. Neither the show cause notice dated 21-10-2011 nor the impugned adjudication order dated 18-1-2013 record any assertion/conclusion whatsoever as to which particular or specific taxable service the appellant had provided. In the absence of an allegation of having provided a specific taxable service in the show cause notice and in view of the failure in the adjudication order as well, neither the show cause notice nor the consequent adjudication order could be sustained."

6.2 I find that the demand of service tax is raised only on the basis of differences of Income noticed during the course of audit in the financial records of the assessee. I also find that neither show cause notice nor impugned order speaks about how income is related and attributed to provisioning of any services by the appellant. The adjudicating authority at Para 8 of the impugned order has found as under :-

"...I find that amount of Rs. 2,08,21,383/- as shown under "profit and loss amount" for the period 1st April 2010 to 31st March, 2011 is inclusive of service tax and hence the benefit of cum-duty price is available to the Noticee. Therefore, the taxable value on which the noticee has been required to pay service tax comes to Rs. 1,19,60,826/- which is mentioned in the show cause notice. On this amount service tax of Rs. 12,31,965/- was required to be paid by the Noticee. I find that the Noticee has already paid the service tax of Rs. 4,79,993/- during 2010-11 and therefore the Noticee is required to pay the differential amount of Service Tax of Rs. 7,51,972/- under proviso to section 73(1) of the Financial Act, 1994 along with interest under section 75 of the Finance Act, 1994."

7. I find that adjudicating authority has not provided any reasoning for the service tax liability while considering the income as value of service provided as the impugned order does not mention character of services provided by the appellant for which Service Tax has been demanded / confirmed, which is an important feature to assess the tax liability as entry of each type of service has got legal implications with reference to tax liability, classification, quantification, exemption, abatement etc. Also, the Appellant has not been put to notice about the classification under which the demand was sought to be

made. The appellant has argued that they had provided local transportation services to M/s Tata Chemicals Ltd. which is exempted and all bills were prepared with the help of an employee of M/s Tata Chemicals Ltd. and they are unable to obtain it as staff has undergone a change. Admittedly, in the case involved in the present proceedings, no such proposal to demand Service Tax in GTA services or Supply of Tangible goods for which appellant was registered has been made by the department in the Show Cause Notice nor has been discussed in the impugned order. The appellant is registered under these two categories of taxable services. GTA services are under RCM and Service Tax is required to be paid by the service recipients and not by service providers and there is no allegation of providing supply of Tangible goods in the Show Cause Notice. Since, no allegation has been made in the Show Cause Notice as to for which service demand is being made, I do not find merit in the impugned order to hold income liable to service tax where nature of services has not been ascertained ! As such, the impugned order on a faulty Show Cause Notice and hence, travelled beyond the scope of show cause notice is not sustainable. I find that the Hon'ble Karnataka High Court in the case of Mahakoshal Beverages Pvt. Ltd. reported as 2014 (33) STR 616 (Kar) has held that demand of Service Tax is not permissible under a head not proposed in Show Cause Notice. The detailed order is reproduced as under :-

"3. In response to the show cause notice, reply was given by the respondent contending that the respondent was undertaking transportation service and was not running any management and consulting services as proposed in the show cause notice. The original authority by order dated 19-12-2005 held that in view of explanation offered by the assessee though the income was not assessable under management consultant service, the same was subject to tax on management auxiliary service and accordingly imposed tax and interest and penalty u/s 76, 77 and 78 of the Act. Being aggrieved by the said order, appeal was preferred by the respondent before the Tribunal contending that the order-in-original dated 19-12-2005 confirming the sales tax for the period from 1-7-2003 to March, 2005 has been passed in contrary to the proposal made in the show cause notice. It was specifically stated in the show cause notice that the income will be treated as management consultancy service u/s 73 of the Finance Act, 1994 and the show cause notice did not contain any proposal to include the income towards management and business auxiliary charges and the original authority having accepted the contention of the assessee that the income did not fall within the ambit of management consultancy service could not have imposed service tax on auxiliary charges in respect of which no show notice was issued and the said contention was upheld by the Tribunal and the appeal was allowed and the impugned order-in-original was set aside by order dated 22-11-2006. Being aggrieved by

the said order, this appeal is filed which is admitted for consideration of the following substantial questions of law :

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"1. Whether the Assessing Authority has got power to confirm the demands under show cause notice under different Heading and category than the one alleged in the show cause notice?

2. Whether the appellate Tribunal was right in coming to the conclusion that the ingredients of proviso to Sec. 73 have not been invoked in show cause notice, when show cause notice in fact mentioned Sec. 73(1)(a) and narrated all the facts which are the details of ingredients of Sec. 73(1)(c), (d) and (e) of the Finance Act, 1994?

3. Whether the Tribunal is justified in holding that mere non-quoting of sub-section of Sec. 73 of Finance Act, 1994 in the demand notice can be held to be not invoking the clause under Sec. 73(1) of the Finance Act, 1994?"

4. Learned counsel for the appellant submitted that a broader view has to be taken since it is mentioned in the show cause notice that the amount is chargeable u/s 73 of the Act where the Service Tax is imposed under the head 'Business Auxiliary Service' and not 'Management Consultancy Service' as proposed would not make any difference as the respondent has admittedly not paid tax and however he is liable to pay the tax and therefore the order of the Tribunal is liable to be set aside and the question of law has to be answered in favour of the revenue. He also submitted that mere non-quoting of sub-section would not enable the respondent to take advantage of the same when imposition of tax is relatable to source of treating the income u/s 73(1)(c), (d) and (e).

5. We have carefully considered the contentions urged by the learned counsel for the appellant. It is clear from the perusal of the show cause notice that as culled out above that what was proposed was to impose Service Tax amount of Rs. 90,96,501/- u/s 73(1)(a) of the Finance Act. In view of the explanation submitted in response to the show cause notice, the original authority held that the tax could not have been leviable under the said Act u/s 73(1)(a). However, the original authority proceeded to impose the tax under the head 'Business Auxiliary Service' which is taxable u/s 73(1)(d) and 73(1)(e). The fact that there was no proposal in the show cause notice to include the income as auxiliary business service is indisputable in view of the contents of the show cause notice and therefore in the absence of any notice issued to the respondent in view of the provisions of Section 73, it is clear that imposition of tax and consequently interest and penalty cannot be sustained and the same has been rightly set aside by the Tribunal. As no order to treat the income as Business Auxiliary Service had been passed without proposing the same to the respondent in the show cause notice, the order passed by the Tribunal is justified and substantial question of law has to be answered against the revenue.

[Handwritten signature]

6. The decision relied by the learned counsel for the appellant is not of any help in the present case as in the said case, the Supreme Court was considering regarding classification of goods u/s 261 of the Act.

7. Accordingly, we hold that the appeal is devoid of merits. Appeal is dismissed."

[Emphasis supplied]

8. In view of above, I set aside the impugned order and allow the appeal.
9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
9. The appeal filed by the appellant stand disposed off in above terms.

(कुमार संतोष)
18/10/2022
आयुक्त (अपील्स)

By R.P.A.D.

To, M/s. D & J Enterprise, Highway Road, Near Ganesh Mandir, Suraj Karadi, Dist. Dwarka 361 345.	प्रति, मे. डी ए जे, एंटरप्राइज, हाइवे रोड, गणेश मंदिर के पास, सूरज कराड़ी, जिला- देवभूमि द्वारका ३६१ ३४५.
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Copy for information and necessary action to :-

1. The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad for his kind information.
2. The Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot.
3. The Additional Commissioner, GST & Central Excise, Rajkot.
4. The Assistant Commissioner, GST & Central Excise, Range Jamnagar.
5. Guard File.