



द्वितीय मंजूर, श्री एस.के. एम्. १ / १<sup>st</sup> Floor, GST Market  
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बाजकूर, बंगलूरु - 560 011

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सूचीकृत जानकारी (सूचीकृत जानकारी)

1. आवेदन संख्या (आवेदन संख्या): 138/2019-20  
2. आवेदन तिथि (Date of Issue): 14.08.2019

**31V-EXCUS-000-APP-013-2019**

आवेदन संख्या (Date of Issue): 14.08.2019 जारी करने की तिथि (Date of Issue): 14.08.2019

कुमार संतोष प्रभु नारायण (अपील) बाजकूर, बंगलूरु  
Passed by Shri Kumar Santosh, Principal Commissioner (Appeals), Bajkote

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1. The Government of India, Ministry of Health and Family Welfare, New Delhi, has issued the following instructions regarding the use of contraceptives in the family planning programme.

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: **ORDER** :

San Jivabhai Bhimabhai Sutraa, Proprietor M/s. M V & Co. Shrihari Chowk, Keshod (hereinafter referred to as 'the Appellant') has filed appeal. The Order In-Original No.AO/JND/44/2017 dated 15.12.2017 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Central GST, Junagadh (hereinafter referred to as 'the adjudicating authority').

2. The facts of the case are that the Appellant is a dealer of Indian Oil Company Ltd ("M/s. IOCL") for Superior Kerosene Oil (hereinafter referred to as "SKO"). Appellant receives Goods Transport Agency services (GTA Services) and made payment towards transportation charges for the said goods transported from Depots of IOCL to their business place. Inquiry made by the jurisdictional Range Superintendent revealed that the Appellant said transportation charges of Rs.82,18,759/- during the period from 2008-09 to 2012-13 but failed to obtain registration under the provisions of Finance Act 1994 (hereinafter referred to as 'the Act') under taxable category of GTA services ("Goods Transport Agency services") and not paid service tax under Reverse Charge Mechanism. Show Cause Notice dated 4.4.2014 was issued to the Appellant demanding service tax of Rs.2,53,823/- under Section 73 of the act along with interest Section 75 of the Act and penalty under Section 76 and Section 78 of the Act. The said notice was decided vide impugned order confirming demand and recovery of interest and also imposing penalties under Section 75, Section 77 and Section 78 of the Act.

3. Being aggrieved with the impugned order, appellant preferred the present appeal on the grounds that the show cause notice was time barred; that the lower adjudicating authority erred in interpreting Section 65(105) (xxx) and Section 65(50) (g) of the Act as services received by him from Truck / Tanker owner do not fall under the definition of GTA; that Section 68 (2) does not apply to proprietary concern; that the lower adjudicating authority has not considered the case laws relied upon by them.

4. Personal hearing in the matter attended by Shri Ajayesh Vyas, Advocate on behalf of the Appellant and submitted written submissions stating that he was directly hiring tankers from one tanker owner and 100% transportation was done through that one tanker; that RCM was not applicable to any proprietary firm, this transportation made by individual truck owner does not fall under the definition of GTA; that there is no GTA service provider in this case, that since no consignment note was issued services do not fall under the category of 'Goods Transport Agency' as defined under Section 65(50)(b) of the Act; that the services received by firm is not GTA service, that they rely upon the judgment of Hon'ble CESTAT in the case of *M/s. Nardganj Ghani Sugar Co* reported as (2014)47 taxmann.com82 (New Del. II-CES AT); that show cause notice is time barred; that ingredients of invoking extended period under Section 13(1) do not exist; that mere non-registration and non filing of ST-3 returns or non payment of service tax are not suppression of facts; that they rely upon the decision of the Hon. CESTAT in the case of *M/s. M P Lachu Udyog Nigam Ltd* reported as (2015) (37) STR 323 (Tr. Del); that reverse charge mechanism is not applicable to any proprietary concern as per Notification 33/2004 dated 31.12.2004 and also under Notification No. 50/2017-ST dated 20.3.2012.

4.1 Appellant has submitted that the matter involves interpretation of law and hence no penalty is imposed upon them and relied upon the decision of the Hon'ble CESTAT's decision in the case of *M/s. Phoenix International Freight Service P Ltd* reported as (2017)47 (STR) 129 and *M/s. General Pharmaceuticals Ltd* reported as 2007(128) ELT86 that it was their bona fide belief that no service tax was payable by them and hence, there is reasonable cause for not imposing penalty. that they rely upon the decision of the Hon'ble CESTAT in the case of *M/s. Fss Fss Engineering* reported as (2011) 31 STR 548 - (2010(22) STR899 (Tr. Del) in this regard.

#### FINDINGS:

5. I have carefully gone through the facts of the case, the impugned order and the contentions raised by the appellant including during personal hearing. The

issues to be decided in the present appeal are whether the services received by the appellant fall under the category of 'Goods Transport Agency Service' and whether service tax was required to be paid by them under reverse charge mechanism or not?

- (i) The contention of the appellant is that the services received by them are from individual truck owner without consignment note using single vehicle and hence, the services received by him do not fall under the category of GTA service. It is also contended that the appellant was not the person liable to pay service tax under (i) (A) Service as per Rule 2(a) of the Service Tax Rules, 1994, the appellant being a proprietary firm.

G 1 I find that the definition of the 'person liable for paying service tax' is given at Rule 2(i)(c)(v) prevailing up to 30.06.2012, which reads as under:-

(a) "person liable for paying the service tax" means,

- (i)  
(ii)  
(iii)  
(iv).

(v) in relation to taxable service provided by a goods transport agency, where the consignor or consignee of goods is, -

- (a) any factory registered under or governed by the Factories Act, 1948 (53 of 1948);  
(b) any company established by or under the Companies Act, 1956 (1 of 1956);  
(c) any corporation established by or under any law;  
(d) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India;  
(e) any co-operative society established by or under any law;  
(f) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (11 of 1944) or the rules made thereunder; or  
(g) any body corporate established or a partnership firm registered by or under any law;

any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage;



॥ श्री श्रीमन्महादेव नमः ॥

॥ कृष्ण लाल आचार्य संस्था

13 अक्टूबर 2017

देवरस लाल अश्विनी पाठशाला

फोन : 933930

# श्री. श्रीम. श्रीम. आर्य संस्था - देवरस

तारीख : 30/07/2017

श्री देवरस लाल अश्विनी		श्री आर्य संस्था	
दिनांक	विवरण	रुपिया	पैसा
03/07/2017	श्री देवरस लाल अश्विनी का देवरस लाल अश्विनी के लिए...	96855	00
04/07/2017	श्री देवरस लाल अश्विनी का देवरस लाल अश्विनी के लिए...	96855	00
कुल		96855	00

हस्ताक्षर अथवा  
मुद्रित नाम सही

6.4 I find that these documents do not justify the appellant's claim that he was the service provider since the services of Goods Transport Agency was not involved and the appellant does fall under the category of Goods Transport Agency. The definition of Goods Transport Agency under Section 65(90)(a) of the Act reads as under:

'goods transport agency' means any person who provides service in relation to transport of goods by road and issues consignment note by whatever name called.

6.5 I find that provision of the service in relation to transportation of goods by road is not in dispute and the said two documents are cash receipt acknowledged by the service provider in the name of 'Voucher' towards transportation charges of Rs.16262/- and Rs.19765/- paid on 16.3.2012 and on 3.4.2012 respectively for transportation of xerox by two different vehicles Reg. No. GJ-31-1082 and Reg. No. GJ-14-1-4699 and included details like consignee, description of goods, registration no. of vehicle, etc. Thus, provision of services has been recorded in the form of these vouchers and hence, the appellant's claim is devoid of merit. In view of facts of this

case. I hold that the appellants are required to pay service tax under Reverse Charge mechanism, being recipient of CIA service. The claim of the appellants that they have used only one Truck from a single Truck owner is also found factually wrong as there are two truck numbers in two sample vouchers.

7. I find that definition of the person liable for paying service tax has been substituted w.e.f. 1.7.2012 and Rule 2 (1) (c) since then reads as under:-

(a) Person liable for paying service tax means -  
 (i) In respect of the taxable services (other than online information and telephony services or internet services) notified under sub-section (2) of section 68 of the Act means,

(A) as relation to ...

(B) in relation to services provided or expected to be provided by a goods transport agency in respect of transportation of goods by road where the person liable to pay freight is,

(i) any factory registered under or governed by the Factories Act, 1946 (53 of 1946);

(ii) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;

(iii) any co-operative society established by or under any law;

(iv) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (22 of 1944) or the rules made thereunder;

(v) any body corporate established, or or under any law; or

(vi) any partnership firm, whether registered or not under any law including association of persons;

any person and any person liable to pay freight either himself or through his agent for the transportation of such goods by road to a goods cartage.

Provided that when such person is deemed to be a taxable person, the provider of such service shall be liable to pay service tax.

*Handwritten signature*

7.1 As per the above definition also, the person liable to pay service tax on CIA service is the person who pays the freight. Thus, the claim of the appellants that they have been excluded from payment of service tax w.e.f. 1.7.2012 is not correct as no exclusion to any proprietary firm from paying service tax has been provided under Reverse Charge mechanism even after introduction of rephrased definition w.e.f. 1.7.2012. I therefore hold that the appellants are required to pay service tax even after amendments made w.e.f. 1.7.2012 as was the case before.



5 The appellant contended that the demand was time barred as there was no suppression with intent to fraud or to evade payment of service tax, that they have not paid service tax on account of their bonafide belief that they were not person liable to pay service tax. I find that the appellant has not obtained service tax registration and nor paid service tax on presumption case. Appellant is recipient of GTA service for quite a long time and concept of reverse charge mechanism and payment of service tax by recipient of S. A. services was not ambiguous and was available known in public domain. Therefore, the appellant's claim of bonafide belief or being non taxable person does not sustain and non payment of service tax by the appellant came to the knowledge of the Department only when inquiry was initiated against the appellant. Hence, required ingredient of suppression of facts with intent to evade payment of service tax for invoking extended period exist in this case. Therefore, I hold that the extended period is rightly invoked and imposition of penalty under Section 78 of the Act is legal and proper.

8.1 I find that the appellant failed to obtain registration and file ST-3 returns and therefore penalty of Rs.20% per day imposed under Section 77(1)(a) and Rs. 10,000/- under Section 77(2) of the Act is legal and proper and I uphold the same.

9 In view of above, I reject the appeal filed by the appellant.

9.1 अपीलकर्ता द्वारा दल के कई अपील का निपटारा त्वरित तरीके से किया जा रहा है।

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



(कुं. सं. 10/16/2017)

प्रधान आयुक्त (अपील)

By RPAD

Sri Jyabhai Bhimabhai Sutareja Proprietor M/s. M M & Co, Sharad Chowk, Keshod Dist. Junagadh	श्री जयभाई भीमाभाई सुतरेजा पोषाडर मेसर्स एम एम एट कंपनी शरद चौक केशोद (जिला जूनागढ़)
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Copy to:-

1. The Pr. Chief Commissioner, CGST & Central Excise, Ahmedabad Zone Ahmedabad for his kind information.
2. The Commissioner, CGST & Central Excise, Bhavnagar Commissionerate Bhavnagar for necessary action.
3. The Assistant Commissioner, CGST, Division Junagadh for further necessary action.
4. Guard File.