



::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



सत्यमेव जयते

Tele Fax No. 0281 - 2477952/2441142 Email: cexappealsrajkot@gmail.com

रजिस्टर्ड डाक ए.डी.द्वारा :- DIN- 20200964SX00004H59E5 EC-780583602IN

क	अपील फाइल नम्बर Appeal File No	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/71/GDM/2020	30/JC/18-19	28/03/2019

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

KCH-EXCUS-000-APP-067-2020

आदेश का दिनांक / Date of Order:	17.09.2020	जारी करने की तारीख / Date of issue:	21.09.2020
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श्रीगोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri. Gopi Nath, Commissioner (Appeals), Rajkot

ग अग्र आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवारकर/ वस्तु एवं सेवाकर,
राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से मुजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST,
Rajkot / Jamnagar / Gandhidham :
घ अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellant & Respondent :-

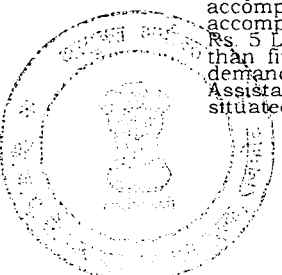
M/s. Shree Ashapura Cargo carriers, Plot No. 36, Sector-7, Gandhidham-370201

इस आदेश (अपील) से व्याधत काइ व्यक्ति निम्नलिखित तरिके से उपयुक्त प्राधिकार / 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) सामा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवारकर अपालाय न्यायाधिकरण के प्रांत अपाल, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 का धारा 35B के अंतर्गत एवं विनियम, 1994 का 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:-
- (i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवारकर 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.
- (ii) उपरोक्त परिच्छेद 1(a) में ब्रताग गए अपीलों के जलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवारकर अपीलीय न्यायाधिकरण (मिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 370016 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, व्याज की मांग और लगाया गया जुमाना, रुपय 5 लाख या उससे कम, 5 लाख रुपय या 50 लाख रुपय तक अथवा 50 लाख रुपय से अधिक है तो क्रमशः 1,000/- रुपय, 5,000/- रुपय अथवा 10,000/- रुपय का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी मार्वाजिनक क्षेत्र के बैंक द्वारा जारी रखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उम शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टै ऑर्डर) के लिए आवदन-पत्र के साथ 500/- रुपय 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, विनियम, 1994 का धारा 86(1) के अंतर्गत सेवारकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती एवं उसके साथ जिन 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 सेवारकर की मांग, व्याज की मांग और लगाया गया जुमाना, रुपय 5 लाख या उससे कम, 5 लाख रुपय या 50 लाख रुपय तक अथवा 50 लाख रुपय से अधिक है तो क्रमशः 1,000/- रुपय, 5,000/- रुपय अथवा 10,000/- रुपय का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी मार्वाजिनक क्षेत्र के बैंक द्वारा जारी रखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उम शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टै ऑर्डर) के लिए आवदन-पत्र के साथ 500/- रुपय 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 fee of Rs. 1,000/- 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/-.



(ii) द्विन अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) और (2A) के अंतर्गत अपील, सेवाकर नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकती है। अपील के साथ अपीलकर्ता को उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उत्तर में एक प्रति प्रामाणिकता के लिए)। अपील के साथ अपीलकर्ता को उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपीलीय न्यायाधिकरण का आवेदन दर्ज करने के लिए अपीलकर्ता को अपील की माँग में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section of 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.

(iii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (महद्वर) के अपीलीय आदेशों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1994 की धारा 35एक के अंतर्गत, जो की द्वितीय अधिनियम, 1994 की धारा 33 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करने समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%) का नुकसान जमा विवक्षित है, या जमाना, जब केवल जमाना विवक्षित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा किए जाने वाली अधिशुल्क राशि इस कराई नया में अधिक न हो।

- (i) केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "ड्यूटी क्रेडिट" के अर्थ में निम्न शामिल है
 - (ii) धारा 11 की के अंतर्गत नुकसान
 - (iii) सेनवेट जमा की ली गई गलत राशि
 - (iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत नुकसान
- बशर्त कि इस धारा के प्रावधान विनियम (सं- 2) अधिनियम 2014 के अंतर्ग में पूर्व किमी अपीलीय प्राधिकरणी के समग्र विचारार्थि स्थगन अर्जी एवं अपील को लागू नहीं होगा। /

For an appeal to be filed before the CESTAT under section 35B 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 that the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.

Under Central Excise and Service Tax, "Duty Credit" shall include :
 (i) amount determined under Section 11-B
 (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 कोपुनरीक्षण आवेदन :
Revision application to Government of India:
 इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अथवा मन्त्रि, भारत सरकार, पुनरीक्षण आवेदन इकाई, द्विन मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिये। / 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 किमी नुकसान के मामले में, जहाँ नुकसान किमी माल को किमी कारखाने में भंडार गृह के पारगमन के दौरान या किमी अन्य कारखाने या द्विन किमी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किमी भंडार गृह में या भंडारण में माल के प्रसंकरण के दौरान, किमी कारखाने या किमी 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 किमी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किमी 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 भारत निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(iv) मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो छूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और होने आदेश जो आयुक्त (अपील) के द्वारा द्विन अधिनियम (सं- 2), 1998 की धारा 109 के द्वारा नियंत्रित की गई तारीख अथवा समायाचिध 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 प्रतियाँ प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संश्लेषण के 3 माह के अंतर्गत की जानी चाहिये। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियाँ संलग्न की जानी चाहिये। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के माध्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिये। / 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 O/O 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.

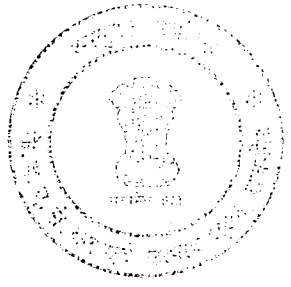
(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिये। / जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000/- का भुगतान किया जाए। / The revision application shall be accompanied by a fee of Rs. 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, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी 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 filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट लगा होना चाहिये। / 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 ओर 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 प्राधिकरणी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलाधी 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 Ashapura Cargo Carriers (hereinafter referred to as 'the appellant') has filed present appeal against the Order-in-Original No. 30/JC/18-19 dated 28.03.2019 (hereinafter referred to as 'the impugned order') passed by the Joint Commissioner, Central Goods & Service Tax, Kutch, Gandhidham (hereinafter referred to as 'the adjudicating authority').

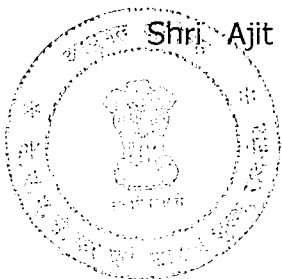
2. The brief facts of the case are that investigation initiated against the appellant revealed that the appellant was providing the taxable service of Cargo Handling Service and Goods Transport Services and was collecting service tax thereon, but was not paying the same to exchequer and also not filing ST-3 returns during the said period. The Show Cause Notice No. IV/06-34/CEP/Kutch/2015-16 dated 08.08.2018 was issued to the appellant calling them to show cause as to why service tax of Rs. 1,49,53,195/- should not be demanded and recovered from them under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as 'the Act') along with interest under Section 75 of the Act and proposed imposition of penalty under Sections 77, 78 and 70 of the Act. The said Show Cause Notice was adjudicated by the adjudicating authority, vide the impugned order, in which Service Tax of Rs. 1,49,53,195/- was confirmed under Section 73(1) of the Act along with interest under Section 75 of the Act and imposed penalty of Rs. 1,49,53,195/- under Section 78 of the Act, penalty of Rs. 10,000/- under Section 77 of the Act and imposed penalty of Rs. 1,20,000/- under Section 70 of the Act.

3. Aggrieved, the appellant has preferred the present appeal, *inter alia*, on the following grounds:

(i) That the copy of SCN was received by them along with impugned order on 15.05.2019 and hence, the appellant was not in position to defend their case before the adjudicating authority at the time of adjudication proceedings; that the appellant was deprived of being defend and heard the matter.

(ii) that the appellant had not collected or received the service tax amount, as shown in the invoices, from their customers and this fact can also be verified from the scheduled head "Other Liabilities and Provisions" of balance Sheet for the period under question and Schedules of the Audit Reports; that moreover,

Shri. Ajit Ravindran Pandiyath and Shri Shanmukharao Jogarao Illa never



accepted the same in their statement. The department wrongly extracted that the appellant collected service tax from its customer.

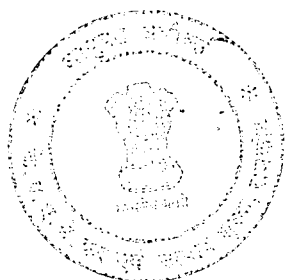
(iv) that the service tax liability was calculated by the department by taking higher rate instead of effective rate.

(v) that there was no intentional delay in filing of return and payment of service tax; that due to financial crunch and health of proprietor and operational difficulties at Vishakhapatnam because of cyclone in October, 2014, all these factors/difficulties ultimately resulted in the present situation; that in spite of all these situations, the appellant declared their service tax liability in their books of accounts of the relevant financial years; that there was no suppression or mala fide intention of the appellant to evade payment of service tax rather these were difficult times which caused delay in payments.

(vi) that interest and penalty cannot be imposed unless demand is sustainable; that the appellant voluntarily paid Rs.10,00,000/- during the investigation, which was more than service tax calculated at that time so no interest can be demanded for that particular time; that though the appellant is agree to pay interest afterwards; that there had been no intention of evasion of tax; that the returns could not be filed due to unavoidable circumstance; that therefore, the appellant requested to take a lenient view and drop the penalty under Section 70 and 77 of the Act; that they relied on the judgment in case of Rakesh Agrawal Vs CCE, Jabalpur [2019(22) GSTL 425 (Tri. Del)].

4. A personal hearing in the matter was attended by Shri Mehul Pandya, Advocate. He reiterated the submission of appeal memo and further filed additional submission dated 01.01.2020 for consideration.

4.1 In additional submission dated 01.01.2020, the Appellant has contended that SCN as well as impugned order issued on the basis of income shown in 26AS Form, without considering the actual facts of the business, is totally wrong and unlawful; that demand mentioned in the impugned order comprises of their exempted turnover; that input credit and challans paid during the period were not considered by the adjudicating authority; that duty rate was not bifurcated and taken on higher side without making applicable changes.



A

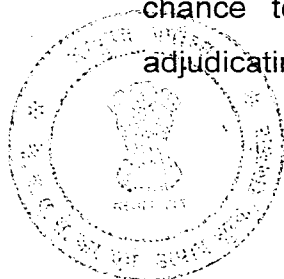
4.2 The Appellant further submitted written submission dated 15.01.2020 contending that the demand confirmed vide impugned order is comprised exempted turnover also; that the said exempted turnover occurred by providing transportation service which covered under reverse charge mechanism and hence, liability of service tax is on service recipient; that they are not liable to pay service tax on GTA services; that while providing cargo handling service, they outsourced the same and for which they paid service tax and hence, they eligible for cenvat credit of the same; that the appellant requested to consider above submissions and set aside the impugned order.

4.3 The Appellant vide letter dated 01.01.2020 informed that they had applied for SVLDRS scheme for the issue involved in the appeal and hence, the appeal was kept in abeyance. No further communication has been received from the Appellant about the outcome of their application filed under SVLDRS. The CGST, Gandhidham vide email dated 02.09.2020 has informed that the SVLDRS-3 has been issued in respect of the appellant, but the appellant did not make the said payment on or before 30.06.2020, thus, the appellant is no longer eligible to avail benefit of the SVLDR Scheme. Hence, I take up the present appeal for decision on merit.

5. I have carefully gone through the facts of the case, the impugned order, grounds of appeal and written as well oral submissions made by the appellant. The issue to be decided in the present appeal is as to whether confirmation of demand of service tax vide impugned order is correct, legal and proper or not.

6. On going through the impugned order, I find that investigation was carried out against the Appellant which revealed that the Appellant had rendered taxable services viz. "Cargo Handling Service" and "Goods and Transport Agency Service" but the Appellant had short paid service tax. The Adjudicating authority confirmed service tax demand on the basis of income reflected in Form 26AS by resorting to best judgment assessment as provided under Section 72 of the Finance Act, 1994.

6.1 The Appellant has contended that they received Show Cause Notice dated 08.08.2018 issued in the matter along with impugned Order and no chance to file defence or to produce supporting documents before the adjudicating authority was given to them; that Service tax was confirmed on the

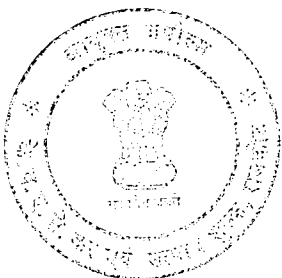


basis of income reflected in Form 11As ignoring the fact that it also comprised consideration received for exempted service; that they also rendered transportation service being GTA agency but liability to pay service tax was on service recipient and they were not liable to pay service tax at all; that the service tax liability has been assessed in the impugned order by taking higher rate instead effective rate during financial years 2015-16 and 2016-17.

7. I find that in the present case, the Appellant has contended that they had not received Show Cause Notice dated 18.03.2018 at material time but received only along with impugned order and hence, they were not in position to file defence reply or submitted any evidence to the adjudicating authority. On the other hand, the adjudicating authority observed in the impugned order that the Appellant had not filed defense reply nor appeared for personal hearing and not provided the requisite documents and therefore, he resorted to best judgement assessment under Section 72 of the Finance Act, 1994.

7.1 On going through books of accounts and sample copies of invoices for transportation charges submitted by the Appellant, I, prima facie, find that the income of GTA services has been shown separately under head "Trpt. & Truck Receipt" in their books of accounts during the period under question and also they mentioned remarks "As per Govt. Notification No. 30/2012, Service Tax is to be paid by the Consignor or Consignee who makes freight payment under the category "Goods Transport Agency"" on their invoices issued for transportation charges. Thus, on scrutiny of the documents submitted by the appellant, it, prima facie, appears that the appellant may have provided GTA services. However, I find that the documents submitted by the appellant are not sufficient to arrive at any conclusion. I, further, find that the Appellant could not produce documentary evidences due to non receipt of Show Cause Notice and hence, the adjudicating authority could not examine the documentary evidences and had to resort to best judgement assessment under Section 72 of the Act.

8. Considering the facts of the case and in the interest of justice, I am of the opinion that the appellant deserves one more chance to properly represent their case and produce all the documentary evidences to the adjudicating authority. I, therefore, find it appropriate to remand the matter to the adjudicating authority for de novo adjudication, without expressing any thing on merits and by keeping all the issues open. The Appellant is directed to furnish all the documents in support of their contention to the adjudicating authority who shall pass speaking order by adhering to the principles of natural justice.



9. In view of the above, I set aside the impugned order and remand the matter to the adjudicating authority for de novo adjudication.

१०. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है.

10. The appeal filed by the appellant is disposed off in above terms.

(Signature)

(Signature) 17/9/2026
(गोपी नाथ)

प्रधान आयुक्त (अपील्स)

By RPAD

To,

M/s. Shree Ashapura Cargo Carriers,
Plot No.36, Sector-7, Gandhidham -
370201.

मे. श्री आशापुरा कार्गो कैरियर, प्लॉट नं. ३६, सेक्टर-७,,
गांधीधाम-३७०२०१

प्रति:

(1) प्रधान मुख्य आयुक्त, केन्द्रीय वस्तु व सेवा कर एवं केन्द्रीय उत्पाद शुल्क, अहमदाबाद क्षेत्र, अहमदाबाद को जानकारी हेतु।

(2) आयुक्त, केन्द्रीय वस्तु व सेवा कर, गांधीधाम को आवश्यक कार्यवाही हेतु।

(3) सहायक आयुक्त, केन्द्रीय वस्तु व सेवा कर, मण्डल: गांधीधाम (शहरी) को आवश्यक कार्यवाही हेतु।

✓ (4) गार्ड फ़ाइल

