



: : 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 / 2<sup>nd</sup> Floor, GST Bhavan  
रेस कोर्स रिंग रोड / Race Course Ring Road  
राजकोट / Rajkot - 360 001



सत्यमेव जयते

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रजिस्टर्ड डाक ए.डी.द्वारा

DIN-20220464SX000000D2C5

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/1/EA2/BVR/2022	BHV-EXCUS-000-JC-VM- 002-2021-22	06/10/2021

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

**BHV-EXCUS-000-APP-021-2021-22**

आदेश का दिनांक / Date of Order:	31.03.2022	जारी करने की तारीख / Date of issue:	01.04.2022
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श्री अखिलेश कुमार, आयुक्त (अपील्स), राजकोट द्वारा पारित /  
Passed by Shri Akhilesh Kumar, Commissioner (Appeals), Rajkot.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, राजकोट / जामनगर / गांधीधामा द्वारा  
उपरलिखित जारी मूल आदेश से सृजित: /  
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.Sanjay Transport Company, (Near Taluka Panchayat Office), Ranavav, District-  
Porbandar, Gujarat.

इस आदेश (अपील) से व्यक्ति 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:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पाद 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.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों 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, 2<sup>nd</sup> 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 रेबॉकिट 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। स्वयंन 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 नियमावली, 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 रेबॉकिट 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। स्वयंन 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 fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs or less, Rs.5000/- 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) 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 प्रतियाँ 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 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 (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, 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 "मांग किए गए शुल्क" में निम्न शामिल है
- (i) धारा 11 डी के अंतर्गत रकम
  - (ii) सेनबेट जमा की ली गई गलत राशि
  - (iii) सेनबेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं- 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्वयंन अर्जी 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 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 को पुनरीक्षण 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 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 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 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 तारीख अथवा समाप्तावधि 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 संग्रहण 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, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पत्र 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 umbers 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 स्वयंन 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 बर्णित एवं अन्य संबन्धित मामलों को सम्बन्धित 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](http://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](http://www.cbec.gov.in).



**:: ORDER-IN-APPEAL ::**

The Assistant Commissioner, CGST Division, Junagadh has filed Appeal No. V2/1/EA2/BVR/2021 on behalf of the Commissioner, Central GST & Central Excise, Bhavnagar (hereinafter referred to as "Appellant Department") in pursuance of the direction and authorization issued under Section 84 of the Finance Act, 1994 (hereinafter referred to as 'Act') against Order-in-Original No. BHV-EXCUS-000-JC-VM-002-2021-22 dated 6.10.2021 (hereinafter referred to as 'impugned order') passed by the Joint Commissioner, Central GST & Central Excise, Bhavnagar (hereinafter referred to as 'adjudicating authority') in the case of M/s Sanjay Transport Company, Ranavav, District Porbandar (hereinafter referred to as 'Respondent').

2. The facts of the case, in brief, are that the Respondent was engaged in providing services. On scrutiny of information received from the Income Tax Department, it was found that the Respondent had earned income for providing services during the F.Y. 2014-15. However, the Respondent was not found registered with Service Tax Department. To ascertain whether the services provided by the Respondent were liable to service tax or not, the Respondent was asked to furnish relevant information / documents like Income Tax Return, Form 26AS, Annual financial accounts, contract/agreement etc. for the F.Y. 2014-15 by the Jurisdiction Range Superintendent vide letter dated 27.7.2020. Since, no response was received from Respondent, service tax was determined on the basis of information received from the Income Tax Department.

2.1 The Show Cause Notice No. V15-49/DEM/2020-21 dated 22.9.2020 was issued to the Respondent for demand and recovery of service tax amounting to Rs. 53,65,759/- under proviso to Section 73(1) of the Act, along with interest under Section 75 and proposed imposition of penalty under Sections 77 and 78 of the Act.

2.2 The above Show Cause Notice was adjudicated by the adjudicating authority vide the impugned order who dropped the demand by observing that,

- (i) The noticee was engaged in transportation of goods of M/s GHCL and liability to pay service tax was under reverse charge mechanism and accordingly, M/s Gujarat Heavy Chemicals Ltd ("M/s GHCL") was liable to pay service tax.





(ii) There is no evidence available on records from which it can be established that the noticee had issued consignment notes and hence, the said activity of transportation of goods by road by the noticee was covered under negative list of services in terms of Section 66D(p)(i) of the Act and hence, demand of service tax was not sustainable.

3. The impugned order was reviewed by the Appellant Department and appeal has been filed on the grounds that,

(i) The adjudicating authority erred in dropping the demand of Rs. 53,65,759/- vide the impugned order.

(ii) That the adjudicating authority found that there was no evidence from which it can be established that the Noticee had issued any consignment note; that the consignee M/s. GHCL was liable to pay the Service Tax and not the Noticee; that the Services of Road Transport provided by the Noticee are not taxable because they are covered under the definition of Negative List under Section 66D(p)(i) of the Act. The Adjudicating Authority has failed to appreciate the legal provision that if the Noticee is not covered under the purview of the GTA services then the question of the service tax liability to be discharged under reverse charge mechanism doesn't arise. Further, the contract between the Noticee and M/s. GHCL has not been examined to verify all aspects of service so provided. It is also not verified whether M/s. GHCL have actually discharged the service tax liability or not.

(iii) It is also clear that issue of consignment note has been stipulated as a mandatory ingredient to qualify the Noticee's activity under GTA. The consignment note can be any form having truck number, amount and load. In other words, the consignment note may not necessarily be in any format but the documents accompanying the goods identifying consignor and consignee, route of consignment enable to construe what a consignment note is. In the instant case, the Noticee has not provided any such document showing the details, viz, name of consigner & consignee, truck number, description of goods, booking date and time, delivery address, amount etc., in support of their contention to merit their activity classifiable under 'Goods Transport Agency' and relied upon case law of S.V.R. Electricals (P) Ltd. reported in [2016 (43) S.T.R. 574 (Tri. -



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Hyd.)].

(iv) Issuance of a consignment note is the 'sine qua non' for a supplier of service to be considered as a Goods Transport Agency. If such a consignment note is not issued by the transporter, the service provider will not come within the ambit of goods transport agency. If a consignment note is issued, it indicates that the lien on the goods has been transferred to the transporter and the transporter becomes responsible for the goods till it's delivery to the consignee. In the instant case, the Noticee has not produced any evidence that they had issued "consignment note" as per section 65B (26) of the Finance Act, 1994 neither they have provided any work order or agreement in support of their contention. Merely on the basis of invoices, it cannot be concluded that the activity of the Noticee can be merited to be qualify under GTA.

(v) The Noticee had transferred the goods (trucks) by way of hiring without transfer of right to use such goods as provided under clause (f) of the Section 66E *ibid* which is as under:

"(f) transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods;"

Therefore, the nature of services provided by the Noticee as service provider is covered under the definition of 'service' as per section 65B (44) /*ibid* and also not covered under the Negative List provided under section 66D *ibid* or under the Notification No. 30/2012-Service tax dated 30.06.2012. Thus, the services provided by the Noticee is 'taxable service' as per section 65B (51) 'bid and subject to levy of service tax under section 66B *ibid*.

4. The Respondent filed Cross Objection vide letter dated 22.2.2022, *inter alia*, contending that,

(i) As per the work order/ Contract, it is mentioned that the transport for the goods supplied by the Anand Trading Co. will be transported through M/s Sanjay Transport Company and the freight will be paid by M/s GHCL. During the course of the financial year, they provided service of goods transport by road to only M/s GHCL and it is duly verified.



(ii) As per the section 68(2) of the Act, the Central Government may notify such services, on which the liability to pay service tax, to the extent specified, shall be shifted from the service provider to the service recipient. In respect of GTA service full liability of service tax is on the service receiver, as per Notification No. 30/2012-ST dated 20.06.2012. Any person located in taxable territory, which pays or is liable to pay freight is treated as service receiver and liable to pay service tax. M/s GHCL limited is governed under the factories Act 1948 and on that basis GHCL limited have discharged its service tax liabilities under RCM and the details of the service tax paid on various date with CIN along with Certificate issued by M/s GHCL is attached with memorandum of cross-objection.

(iii) It is held by the Hon'ble CESTAT in the case of Umasons Auto Compo Pvt. Ltd. -2014 - TIOL-126-CESTAT-MUM that once the amount of Service Tax is accepted by the Revenue from provider of GTA service, it cannot be demanded again from the recipient of the GTA service. They can take the same view that the Service Tax is accepted by the Revenue from the Service Receiver, it cannot be demanded again for the same transaction from the service provider.

(iv) The Department has been accepting the Service tax returns filed by GHCL Ltd. on this transaction under RCM of Goods Transported By road. Given this, the Department is not permitted to go against its own Service tax registration and seek to demand Service tax from the service provider of the Goods Transported by road on the same dispute raised by the Department is incorrect in law. Service tax is also being demanded from the service provider. This contradiction on the part of the Department itself establishes that the show cause notices have been issued in violation of law.

5. Personal Hearing in the matter was conducted in virtual mode through video conferencing on 10.3.2022. Shri Rajan Thakar, Advocate, appeared on behalf of the Respondent. He reiterated the submission made in cross objection to appeal.



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6. I have carefully gone through the facts of the case, the impugned order, appeal memorandum, Cross Objection filed by the Respondent as well as oral submission made at the time of hearing. The issue to be decided in the present appeal is whether the activity of the Respondent is covered under clause (f) of Section 66(E) of the Act and whether the Respondent is liable to pay service tax amount of Rs. 53,65,759/- or not.

7. On perusal of the records, I find that the Respondent was engaged in the business of transportation of goods by road and had provided transportation service to M/s GHCL. The adjudicating authority, after verifying the documents submitted by the Respondent, held that since the Respondent had not issued consignment notes, the activity undertaken by them for transportation of goods by road was covered under Negative List of services in terms of Section 66D(p)(i) of the Act and they were not liable to pay service tax but the service recipient M/s GHCL was liable to pay service tax.

7.1 The Appellant Department has contended that if the Respondent had not issued consignment notes, as observed by the adjudicating authority, then they are not Goods Transport Agency and question of discharge of service tax liability by service recipient i.e. M/s GHCL under reverse charge mechanism doesn't arise. The adjudicating authority has not examined the contract between the Noticee and M/s. GHCL and also not verified whether M/s. GHCL has actually discharged the service tax liability or not. The Appellant Department has further contended that the activity undertaken by the Respondent was a declared service in terms of clause (f) of Section 66E of the Act and covered under the definition of 'service' as per Section 65B(44) of the Act and consequently, the Respondent was liable to pay service tax.

7.2 The Respondent has contended that as per the work order/ Contract, it is mentioned that the transport for the goods supplied by M/s Anand Trading Co. will be transported through M/s Sanjay Transport Company and the freight will be paid by M/s GHCL. During F.Y. 2014-15, they provided transportation service only to M/s GHCL and it is duly verified. The Respondent further pleaded that M/s GHCL has discharged its service tax liabilities under reverse charge mechanism and the details of the service tax paid on various date with CIN along with Certificate issued by M/s GHCL is also attached with memorandum of Cross Objection. Once service tax is discharged by M/s GHCL, it cannot be demanded





again from them.

7.3 I have gone through LOI dated 9.8.2014 issued by M/s GHCL contained in Memorandum of Cross Objection. I observe that said LOI was issued to M/s Anand Trading Co for supply of Chemical Grade Limestone, which was to be transported through M/s Sanjay Transport Company, by the Respondent herein. I have also gone through Certificate issued by M/s GHCL vide letter dated 12.2.2022 submitted by the Respondent, wherein it has been confirmed that they had discharged service tax under reverse charge basis during F.Y. 2014-15 on freight paid to the Respondent and also attached details of invoices raised by the Respondent and corresponding service tax challan details under which they had discharged service tax. The Respondent has not provided copies of said invoices before this appellate authority and hence, it is not possible to correlate and verify genuineness of said certificate issued by M/s GHCL. I further observe that the Respondent had produced copies of said invoices before the adjudicating authority during the course of adjudication but relevant contract/ LOI and service tax payment details of M/s GHCL were not produced before the adjudicating authority. I, therefore, find it fit to remand the present case to the adjudicating authority with a direction to verify that M/s GHCL had discharged service tax on freight payment made to the Respondent by correlating service tax payment details with invoices issued by the Respondent. The Respondent is also directed to produce copies of said LOI dated 9.8.2014 and said letter dated 12.2.2022 of M/s GHCL before the adjudicating authority. The adjudicating authority is directed to carry out remand proceedings by adhering to the principles of natural justice and by issuing speaking order.

8. As regards other contention of the Appellant Department that service rendered by the Respondent is covered under declared service in terms of clause (f) of Section 66E of the Act, I find that the Respondent has claimed that M/s GHCL has discharged service tax on transportation service rendered by them to M/s GHCL, which will be examined by the adjudicating authority in remand proceedings. If the claim of the Respondent is found to be true, the Respondent cannot be made liable to pay service tax again on same transactions under Section 66(E)(f) of the Act, as it would amount to double taxation. However, if it is found during remand proceedings that service tax payment details of M/s GHCL could not be tallied with the corresponding invoices issued by the Respondent, then the adjudicating authority is directed to examine the



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applicability of the provisions contained in Section 66(E)(f) in respect of transportation service rendered by the Respondent to M/s GHCL.

9. In view of above, I set aside the impugned order and dispose off the appeal by way of remand.

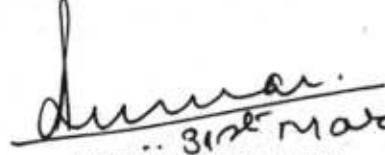
10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

10. The appeal filed by the Appellant stand disposed off in above terms.

सत्यापित,



विपुल शाह  
अधीक्षक (अपीलेंस)

  
31<sup>st</sup> March, 2022.  
(AKHILESH KUMAR)  
Commissioner (Appeals)

By RPAD

To, M/s Sanjay Transport Company, Near Taluka Panchayat Office, Ranavav, District Porbandar.	सेवा में, मैसर्स संजय ट्रांसपोर्ट कंपनी, तालुका पंचायत कार्यालय के पास, रानावाव, जिला पोरबंदर.
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प्रतिलिपि :-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, जूनागढ़ मण्डल, को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फ़ाइल।

