



:: आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा करबीरकेन्द्रीय 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

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सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा

DIN-20220464SX0000444A54

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/2/EA2/BVR/2022	BHV-EXCUS-000-JC-VM- 005-2021-22	26/10/2021

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

BHV-EXCUS-000-APP-022-2021-22

आदेश का दिनांक /
Date of Order: **31.03.2022** जारी करने की तारीख /
Date of issue: **01.04.2022**

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 मूजित: /

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. Govindbhai Narayanbhai Karangiyatal, (Veraval, Dist-Junagadh), Dabhor, Gujrat-362265.

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

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है। /

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(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, 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) नियमवाली, 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, जहाँ उत्पाद शुल्क की माँग, ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहाँ संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

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

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

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied 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 जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि इस करोड़ रुपए से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
- धारा 11 डी के अंतर्गत रकम
 - सेनबेट जमा की सी गई गलत राशि
 - 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 समस्त विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा। / For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,
- Under Central Excise and Service Tax, "Duty Demanded" shall include :
- amount determined under Section 11 D;
 - amount of erroneous Cenvat Credit taken;
 - 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 कोपनरीक्षण 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 ईकाई, 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:
- 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
 - भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
 - 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.
 - सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो छूटी 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 समायाविधि 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.
 - उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। / The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the O.I.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.
 - पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी 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.
 - यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिए। इस तथ्य के होते हुए भी की लिखा पत्री 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.
 - 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 टिकिट लगी 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.
 - सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में बर्णित 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.
 - उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in.



:: ORDER-IN-APPEAL ::

The Assistant Commissioner, CGST Division, Junagadh has filed Appeal No. V2/2/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-005-2021-22 dated 26.10.2021 (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 Govindbhai Narayanbhai Karangiya, Veraval (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 and 2015-16. 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 financial years 2014-15 and 2015-16 by the Jurisdiction Range Superintendent vide letters dated 23.7.2020 and 29.7.2020. 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. V15-56/DEM/HQ/2020-21 dated 22.9.2020 was issued to the Respondent for demand and recovery of service tax amounting to Rs. 67,65,075/- under proviso to Section 73(1) of the Act, along with interest under Section 75. It was also proposed for 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 the business of transportation of goods by road and had provided their trucks to many transporters for transportation of goods;



(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. 67,65,075/- vide the impugned order.

(ii) 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) ‘*ibid* and subject to levy of service tax under section 66B *ibid*.

4. The Respondent filed Cross Objection vide letter dated 18.9.2020, *inter alia*, contending that,

(i) The Appeal has been filed on the ground which was not part of the Show Cause Notice. The appeal has been filed on the ground that they had transferred the goods (trucks) by way of hiring without transfer of right to use such goods which was a declared service under Section 66(E)(f) of the Act and covered as ‘service’ under Section 65B(44) *ibid*. There is an established principle that the facts and allegation which have not been mentioned in the SCN should not be taken as a new ground in memorandum of appeal. This is as good as travelling beyond the scope of SCN and relied upon following case laws:

(a) M.K.R. Frozen Food Export - 1998 (103) ELT 383



(b) Swastik Coaters Pvt Ltd - 1999 (107) ELT 533

(ii) The order issued by the Joint Commissioner is just legal and proper. The Show Cause Notice was not issued on any allegation or investigation, but only on the basis of details shared by the Income Tax department. It was explained by them the fact that it was giving the trucks to transporters and it was not required to pay any service tax. As there was no any other allegation, there was no chance or requirement to submit any more explanations. The learned Joint Commissioner, after verifying the facts had logically found in Para 25 & 26 of the Order-in-original that transportation of goods except by a GTA or Courier agency are placed under 'Negative list' in terms of Section 66D(p) of the Act which is the correct interpretation of law.

(iii) The services provided by them were exempted by Notification No. 25/2012-ST dated 20.06.2012, as amended. Though this was not an allegation in the show cause notice and the ground of levy of service tax on the basis of Section 66E(f) of the Finance Act, 1994, the services of giving trucks on hire to Goods Transport Agency are exempted from payment of Service Tax by virtue of entry No. 22 of Notification No. 25/2012-ST dated 20.06.2012, as amended. Thus, if a vehicle is given on hire to a Goods Transport Agency, then the service is exempted from payment of service Tax. That the Joint Commissioner, the original authority who had examined the documents had mentioned in his order-in-original that the appellant had provided their trucks to many transporters for transportation of goods, as evident from the Income Ledger submitted by them during the course of adjudication process. On other hand, the appellant Department had not examined this aspect and without giving any cogent evidence has contended that the services are liable to service tax. In view of the fact that the respondent is not a Goods Transport Agent and that it is providing vehicles on hire to Goods Transport Agents, no service tax is payable by it.

(iv) The show cause notice was issued without investigation and only based on the data provided by Income Tax department as per TDS and IT return is not sustainable in law.



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(v) Extended period can be invoked only when there are ingredients necessary to justify the demand for the extended period in a case leading to short payment or non-payment of tax. The onus of establishing that these ingredients are present in a given case is on revenue and these ingredients need to be clearly brought out in the Show Cause Notice along with evidence thereof. The active element of intent to evade duty by action or inaction needs to be present for invoking extended period and relied upon case law of M/s Cosmic Dye chemical 1995 (75) E.L.T. 721 (S.C.),

(vi) No penalty imposable under Sections 77(1) and 78 of the Finance Act, 1994. In the case of interpretation of law, no penalty is imposable as held in the case of ITEL Industries Pvt.Ltd - 2004 (163) E. L. T. 219 (Tri – Bang.). In view of this, the proposal of penalty is not correct in law. It is also submitted that penalty cannot even otherwise be imposed in the facts of the present case. Penalty is a quasi-criminal matter and therefore, it could be restored to only cases where malafide intention or guilty conscious of an assessee was established. Since it is required to be established that action of an assessee was deliberate in the matter of penalty, this measure is to be restored to sparingly. In the facts of the present case where no suggestion or allegation of malafide intention to evade payment of duty is even made out against them, there is no justification in the imposition of penalty in law as well as in facts.

5. Personal Hearing in the matter was conducted in virtual mode through video conferencing on 10.3.2022. Shri R.C. Prasad, authorized person, appeared on behalf of the Respondent. He reiterated the submission made in cross objection as well as in additional written submission dated 10.3.2022.

5.1 In additional written submission, grounds of appeal memorandum are reiterated and further submitted that,

(i) The Board vide instruction dated 26.10.2021 has issued directions for conducting proper investigation before issue of Show Cause Notice and that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the notice. It is submitted that the Joint Commissioner had acted as per the instructions only, but



the present appeal has been filed without verifying the facts and against the spirit and direction of the instructions and the appeal has been filed taking such ground which was not a part of the show cause notice. Had that particular ground mentioned in the show cause notice, they must have responded to it accordingly. The Department has not disputed the basis on which the demand has been dropped by the adjudicating authority, but a new ground has been mentioned, which is not permissible. That there is an established principle that the facts and allegations which have not been mentioned in the show cause notice, should not be taken as a ground in the memorandum of appeal. This as good as travelling beyond the scope of show cause notice.

(ii) The Appellant Department has taken shelter of the provisions covering the 'declared service', however, even if such service is covered under the 'declared service', then also such services are exempted from service tax by virtue of Entry No. 22 of Notification No. 25/2012-ST dated 20.6.2012.

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 and additional written submission dated 10.3.2022. 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. 67,65,075/- 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 their trucks to many transporters for transportation of goods. 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. The Appellant Department has 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.

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7.1 The Respondent has contended that the services of giving trucks on hire to Goods Transport Agency are exempted from payment of Service Tax by virtue of Entry No. 22 of Notification No. 25/2012-ST dated 20.06.2012, as amended. The Respondent has further contended that the adjudicating authority, after verifying the facts, has logically arrived that service of transportation of goods by road, except by a GTA or Courier agency, is placed under 'Negative list' in terms of Section 66D(p) of the Act, which is correct interpretation of law.

8. I find it is pertinent to examine the term 'service' defined under Section 65B (44) of the Act as well as provisions relating to declared service under clause (f) of Section 66E of the Act relied upon by the Appellant Department, which are reproduced as under:

"SECTION 65B. Interpretations. — In this Chapter, unless the context otherwise requires,—

(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

(a) an activity which constitutes merely,—

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the Constitution, or

(iii) a transaction in money or actionable claim;

(b) a provision of service by an employee to the employer in the course of or in relation to his employment;

(c) fees taken in any Court or tribunal established under any law for the time being in force."

"SECTION 66E. Declared services. — The following shall constitute declared services, namely :—

... ..

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

9. In backdrop of the above provisions and on examining the fact of the case, I observe that the Show Cause Notice was issued to the Respondent for demanding service tax on the basis of data received from the Income Tax Department without carrying out any inquiry in the matter. The Adjudicating authority had scrutinized the documents submitted by the Respondent during the course of adjudication proceedings and observed that the Respondent had provided trucks to transporters for transportation of goods by road and there was no evidence available on records from which it can be established that the



Handwritten signature/initials.

Respondent had issued consignment notes and hence, the said activity of the Respondent was covered under negative list of services, in terms of Section 66D(p)(i) of the Act and the Respondent was not liable to pay service tax. The Appellant Department has raised a new ground in the appeal, which was not part of the Show Cause Notice, for classifying the service rendered by the Respondent under clause (f) of Section 66E of the Act. Ideally, such aspect should have examined before issuing Show Cause Notice by conducting proper inquiry, which has not been done in the present case. It is not possible at this stage to decide any issue which is not covered in the Show Cause Notice. In this regard, it is pertinent to take note of the Instructions dated 26.10.2021 issued by the Board, wherein it has been directed to the field formation to issue Show Cause Notice only after proper verification of facts.

10. Apart from the above, the Respondent has pleaded that the service of giving trucks on hire to Goods Transport Agency was exempted from payment of Service Tax by virtue of Entry No. 22(b) of Notification No. 25/2012-ST dated 20.06.2012, as amended. The relevant entry is reproduced as under:

- “22. Services by way of giving on hire -
(b) to a goods transport agency, a means of transportation of goods;”

10.1 It, *prima facie*, appears that the activity of giving trucks on hire basis to transporters is exempted from service tax by virtue of Entry No. 22 of Notification No. 25/2012-ST dated 20.6.2012, as claimed by the Respondent. However, such a claim could have been verified, had there been an in-depth inquiry conducted in the matter. After careful examination of the facts emerging from records, I am of the considered opinion that the contention raised by the Appellant Department is devoid of any merit and not legally sustainable.

11. In view of above, I uphold the impugned order and reject the appeal filed by the Appellant Department.

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

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



सत्यापित,

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विपुल शाह
अधीक्षक (अपील)

Akhil Kumar
31st March, 2021
(AKHILESH KUMAR)
Commissioner (Appeals)

By RPAD

To, M/s Govindbhai Narayanbhai Karangiya, Dabhor, Veraval, District Gir Somnath.	सेवा में, मैसर्स गोविंदभाई नारायणभाई करंगिया, डाभोर, वेरावल, जिला गिर सोमनाथ।
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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।

