



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



सत्यमेव जयते

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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रजिस्टर्ड डाक ए.डी.द्वारा:-DIN-20210964SX000071237A

क्र	अपील / फाइल नं./ Appeal / File No	मूल आदेश सं / O.L.O. No.	दिनांक / Date
	V2/64/RAJ/2020	08/GST/AC/2020-21	30-09-2020

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

KCH-EXCUS-000-APP-218-2021

आदेश का दिनांक / Date of Order:	जारी करने की तारीख / Date of issue:
15.09.2021	16.09.2021

श्री अखिलेश कुमार, आयुक्त (अपील), राजकोट द्वारा पारित /
Passed by Shri Akhilesh Kumar, Commissioner (Appeals), Rajkot.

अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/वस्तु एवं सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से मुक्ति: /

Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhidham :

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

M/s. Radhika Handling, Office No. 212, Patel Centre Owner's Association, Plot No. 41, Sector 9/A, Gandhidham-370201,

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 अपीलार्थ न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित बचक 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 भूयुक्तान से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थ 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 अपीलार्थ न्यायाधिकरण (मिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद-380015 को की जानी चाहिए। /

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

(iii) अपीलार्थ न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये एच.ए.ए. 3 की चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की सीमा, व्याज की सीमा और 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 अपीलार्थ न्यायाधिकरण की शाखा के महायुक्त रजिस्ट्रार 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 जहां संबंधित अपीलार्थ न्यायाधिकरण की शाखा स्थित है। स्वयं 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) अपीलार्थ न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रायः S.T. 5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उसमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की सीमा, व्याज की सीमा 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 अपीलार्थ न्यायाधिकरण की शाखा के महायुक्त रजिस्ट्रार 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 जहां संबंधित अपीलार्थ न्यायाधिकरण की शाखा स्थित है। स्वयं 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 upto Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs.500/-



- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकती 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 महायुक्त 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.
- (ii) 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 विनियम 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 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
 - सेनवेट जमा की भी गई गलत राशि
 - सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान विनियम (सं- 2) अधिनियम 2014 के आरंभ से पूर्व किन्ती अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी 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 :
(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 मामला में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर मन्त्रि, 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 किन्ती नुकसान के मामले में, जहां नुकसान किन्ती माल को किन्ती कारखाने से भंडार गृह के पारगमन के दौरान या किन्ती अन्य कारखाने या फिर किन्ती एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किन्ती भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किन्ती कारखाने या किन्ती 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 किन्ती राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर अरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिवेट) के मामले में, जो भारत के बाहर किन्ती 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.
 - मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो क्रेडिट केडीट 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 समायाचिधि 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 मंशेषण 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.
 - 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 दंग से किया जाना चाहिए। इस तथ्य के तहत हुए भी की लिखा पट्टी 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 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.
 - 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.
 - उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित आपक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbcc.gov.in की 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.cbcc.gov.in.



:: ORDER-IN-APPEAL ::

M/s. Radhika Handling, Gandhidham (hereinafter referred to as "Appellant") has filed Appeal No. V2/64/GDM/2020 against Order-in-Original No. 8/GST/AC/2020-21 dated 30.9.2020 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central GST Division, Gandhidham (Urban) (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that the Appellant was engaged in providing Cargo Handling Service, GTA Service etc. and was registered with Service Tax Department having Registration No. AAPFR5904HSD001. Investigation carried out against the Appellant revealed that they had provided Cargo Handling Service which included unloading of cargo from Railway wagon to loading on trucks, transportation of cargo upto the place of service recipients and unloading of cargo. The Appellant was paying service tax on said services in respect of all service recipients except M/s B. Devchand & Sons. Investigation revealed that the Appellant had bifurcated the invoices issued by them for providing said services to M/s B. Devchand & Sons in two parts i.e. one invoice was issued for loading and unloading of cargo on which service tax was discharged and second invoice was issued for transportation of cargo on which no service tax was discharged and thereby evaded payment of service tax amount of Rs. 7,67,389/- during the years 2013-14 and 2014-15. The investigation also revealed that the Appellant had mis-declared and suppressed correct value of GTA service rendered by them in their ST-3 Returns during the period from April, 2013 to March, 2016 as compared to income booked in their annual accounts and thereby evaded payment of service tax amount of Rs. 2,96,044/-.

2.1 On culmination of investigation, Show Cause Notice No. SCN/13/CEP/KUTCH/2018-19 dated 9.7.2018 was issued to the Appellant calling them to show cause as to why service tax amounting to Rs. 10,63,433/- should not be demanded and recovered from them under proviso to sub-Section (1) of Section 73 of the Finance Act, 1994 (hereinafter referred to as 'Act') along with interest under Section 75 of the Act and proposed imposition of penalty under Sections 76, 77 and 78 of the Act.

2.2 The above Show Cause Notice was adjudicated by the adjudicating



authority vide the impugned order who confirmed demand of service tax amounting to Rs. 10,63,433/- under proviso to Section 73(1) of the Act, along with interest under Section 75 of the Act and imposed penalty of Rs. 10,63,433/- under Section 78 of the Act and Rs. 10,000/- under Section 77 of the Act.

3. Being aggrieved, the Appellant preferred the present appeal contending, *inter-alia*, as under:

(i) The adjudicating authority has erred in failing to appreciate that the Appellant had not provided any service of packing and hence service provided by them did not fall within the scope and ambit of 'Cargo Handling Service'. Since the primary condition of packing is not satisfied in this case, service of unloading of already packed bags from railway wagons, loading them on to trucks and transporting the same to the godown of receivers but without carrying out packing (& unpacking) will not be covered by the definition of Cargo Handling Service. Packing is the primary and fundamental requirement of Cargo Handling Service. In absence of packing, it cannot be alleged or held that appellant had provided Cargo Handling Service. Consequently, the appellant is not liable to pay Service Tax, interest and penalty on this account. The impugned order demanding Service Tax amounting to Rs. 7,67,389/-, interest & levying penalty under the category of Cargo Handling Service is liable to be quashed and set aside.

(ii) They had also provided trucks on hire basis to goods transport agency. Income received from such GTA on account of giving on hire trucks is exempted from Service Tax by virtue of Sl. No. 22 (b) of Notification No. 25/2012-S.T. dated 12.06.2012, as amended. Hence, such exempted income was not incorporated in the S. T.-3 returns filed at the material time. On this basis, it is submitted that demand of Service Tax amounting to Rs. 2,96,044/- along with interest and penalty is also not tenable in the eyes of law and hence, the same is liable to be quashed and set aside.

(iii) The Show Cause Notice is time barred inasmuch as there is no suppression with intent to evade Service Tax. The entire income on which Service Tax is demanded is duly recorded in the books of account. Moreover, the issue is of interpretation revolving around scope of Cargo



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Handling Service. Hence, the impugned order advocating invocation of extended period for the purpose of demanding Service Tax under the proviso to Section 73(1), interest under the provisions of Section 75 and imposing mandatory penalty under the provisions of Section 78 of Finance Act, 1994 is not in accordance with law and liable to be quashed and set aside.

4. Personal hearing in the matter was scheduled on 8.6.2021 in virtual mode through video conferencing. Shri Vikas Mehta, Consultant, appeared on behalf of the Appellant and reiterated the submissions made in appeal memorandum. He further submitted that he would file additional written submission based on which the case may be decided.

4.1 In additional written submission filed vide letter dated 8.6.2021, it has been, *inter alia*, contended that,

(i) With regard to demand of service tax amounting to Rs. 2,96,044/- covered by Table-I of the Show Cause Notice, it is submitted that the said income (difference of Rs. 19,39,013/- in 2013-14, 64,58,663/-in 2014-15 and 8,40,331/-in 2015-16) was received by them on account of giving trucks on hire to various goods transport agencies and submitted a certificate No. KRA/CERT/2021-2022/003 dated 7.6.2021 issued by M/s. Kanaiya R. Asnani & Co., Gandhidham, Chartered Accountants.

(ii) As per Sl. No. 22 (b) of Notification No. 25/2012-S.T., dated 20.06.2012, services by way of giving trucks (means of transportation of goods) to a goods transport agency is exempted from the whole of service tax. Hence, demand of service tax amounting to Rs. 2,96,044/- is liable to be quashed and set aside. Consequently, no interest and penalty are payable.

(iii) That services by way of transportation of goods by road is covered by sub-clause (p) of Section 66D of the Finance Act, 1994 containing the negative list of services. Hence, confirmation of service tax demand of Rs. 7,67,389/- is not sustainable.

(iv) The show cause notice as well as impugned order has been issued, *inter alia*, demanding service tax under the category of cargo handling service. However, no evidence to alluded to show that the appellant had



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carried out packing or unpacking of cargo, which is a mandatory ingredient of this service. Consequently, the requirement of section 65 (105)(zr) of Finance Act,1994 containing definition of cargo handling service is not satisfied. Hence, impugned order is not sustainable on this ground also.

(v) That an amount of Rs. 62,08,647/- (Rs. 13,63,312/- for 2013-14 and Rs. 48,45,335/- for 2014-15) involving service tax of Rs. 1,91,847.00/- attributable to transportation service provided to M/s. B. Devchand & Sons that is already included in Table-II, is also included in Table-1 (which deals with income received from giving trucks on hire). Hence, the aforesaid amount of Rs. 62,08,647/- is required to be excluded from Table-I of show cause notice on account of double taxation on one and the same amount. The details are given in a separate certificate dated 8.6.2021 issued by M/s. Kanaiya R. Asnani & Co., Gandhidham, Chartered Accountants. On this basis, irrespective of the outcome, demand does not exceed Rs. 8,71,586/- (i.e. Rs. 10,63,433/- less Rs. 1,91,847/-).

5. I have carefully gone through the facts of the case, the impugned order, grounds of appeal in the appeal memorandum and oral as well as written submissions made by the Appellant. The issues to be decided in the present appeal are whether,

- (i) The impugned order confirming service tax demand of Rs. 7,67,289/- in respect of services provided to M/s B. Devchand & Sons in the years 2013-14 and 2014-15 is correct, legal and proper or not.
- (ii) The impugned order confirming service tax demand of Rs. 2,96,044/- in respect of transportation service rendered by the Appellant in the years 2013-14, 2014-15 and 2015-16 is correct, legal and proper or not.
- (iii) The impugned order imposing penalty under Sections 77 and 78 of the Act are correct, legal and proper or not.

6. On perusal of the records, I find that an offence case was booked against the Appellant for evasion of service tax. Investigation carried out by the departmental officers revealed that the Appellant had bifurcated the invoices issued by them for providing cargo handling service to M/s B. Devchand & Sons in



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two parts i.e. one invoice was issued for loading and unloading of cargo on which service tax was discharged and second invoice was issued for transportation of cargo on which no service tax was discharged and thereby the Appellant evaded payment of service tax of Rs. 7,67,389/- during the years 2013-14 and 2014-15. The investigation also revealed that the Appellant had mis-declared and suppressed correct value of GTA service rendered by them in their ST-3 Returns during the period from April, 2013 to March, 2016 as compared to income booked in their annual accounts and thereby evaded payment of service tax of Rs. 2,96,044/-. The adjudicating authority confirmed service tax demand totally amounting to Rs. 10,63,433/- under proviso to Section 73(1) of the Act, along with interest under Section 75 of the Act and imposed penalty of Rs. 10,63,433/- under Section 78 of the Act and Rs. 10,000/- under Section 77 of the Act.

6.1 The Appellant has contended that they had not provided any service of packing and hence, service provided by them did not fall within the scope and ambit of Cargo Handling Service. Since the primary condition of packing is not satisfied in this case, service of unloading of already packed bags from railway wagons, loading them on to trucks and transporting the same to the godown of receivers but without carrying out packing & unpacking will not be covered by the definition of Cargo Handling Service. The Appellant further contended that packing is the primary and fundamental requirement of Cargo Handling Service and in absence of packing, it cannot be held that the Appellant had provided Cargo Handling Service and consequently, they are not liable to pay Service Tax, amounting to Rs. 7,67,389/-, interest and penalty.

7. I find that prior to 1.7.2012, service tax was levied under Section 66 of the Act on services specified in sub-clauses of Section 65(105) of the Act. However, provisions of Section 66 of the Act ceased to apply with effect from 1.7.2012, as notified vide Notification No. 22/2012-ST dated 5.6.2012. After 1.7.2012, service tax was levied in terms of Section 66B of the Act at the rate of fourteen percent on value of all services other than those services specified in the negative list under Section 66D of the Act. Thus, with effect from 1.7.2012, classification of taxable services under specific category was done away with and service tax was levied on any service, if the activity was covered within the definition of 'service' in terms of Section 65B(44) of the Act and the same was not covered under negative list as specified under Section 66D of the Act or not



exempted under any exemption notification. In the present case, period involved is April, 2013 to March, 2015 and hence, provisions as contained in Section 66B shall be applicable. It is not under dispute that activities of loading, unloading and transportation of cargo upto the place of service recipient is covered within the definition of service in terms of Section 65B(44) of the Act. Hence, the Appellant was liable to pay service tax on the said activities of loading, unloading and transportation of cargo upto the place of service recipient during the years 2013-14 and 2014-15. I, therefore, uphold the impugned order to the extent of confirmation of service tax demand of Rs. 7,67,389/- under Section 73(1) of the Act. Since, confirmation of service tax demand is upheld, it is natural that confirmed demand is required to be paid along with interest. I, therefore, uphold the impugned order for recovery of interest under Section 75 of the Act.

8. I find that the adjudicating authority has confirmed service tax demand of Rs. 2,96,044/- on the ground that the Appellant had mis-declared and suppressed correct value of GTA service rendered by them in their ST-3 Returns during the period from April, 2013 to March, 2016, as compared to income booked in their annual accounts. On the other hand the Appellant has contended that they had also provided trucks on hire basis to goods transport agency and income received from such GTA on account of giving trucks on hire basis was exempted from Service Tax by virtue of Sl. No. 22(b) of Notification No. 25/2012-S.T. dated 12.06.2012, as amended. Hence, such exempted income was not incorporated in the S.T.-3 returns filed at the material time and produced C.A. certificate dated 7.6.2021 of M/s Kanaiya R. Asnani & Co., Gandhidham. The Appellant further contended that confirmation of service tax demand of Rs. 2,96,044/- along with interest and penalty is not tenable and is liable to be quashed and set aside.

8.1 I find that Sl. No. 22(b) of Notification No. 25/2012-S.T. dated 12.06.2012, as amended, exempted services of giving on hire any means of transportation of goods to a goods transport agency. I have gone through certificate dated 7.6.2021 of M/s Kanaiya R. Asnani & Co., Chartered Accountants, which has been produced by the Appellant wherein details of income received for providing trucks on hire basis to various Goods Transport Agencies during the years 2013-14, 2014-15 and 2015-16 have been given. I find

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that the Appellant has not corroborated the said certificate with production of relevant invoices issued by them for giving trucks on hire basis to GTA. In the present case, verification of relevant documents is important before granting service tax exemption under said notification, particularly in backdrop of the fact that the Appellant had not contested this issue before the adjudicating authority nor produced any documentary evidences in this regard. I, therefore, set aside the impugned order to the extent of confirmation of service tax demand of Rs. 2,96,044/- and remand the matter to the adjudicating authority for determining eligibility of exemption under Sl. No. 22(b) of Notification No. 25/2012-S.T. dated 12.06.2012, as amended claimed by the Appellant. I also direct the Appellant to produce relevant invoices/ ledger accounts and other documents, if any, called upon by the adjudicating authority. Needless to mention that *de novo* proceedings shall be carried out by adhering to the principles of natural justice.

9. The Appellant has contended that amount attributable to transportation service provided to M/s. B. Devchand & Sons, which is included in Table-II of show cause notice, is also included in Table-1 of show cause notice, which deals with income received from giving trucks on hire basis during the years 2013-14 and 2014-15. Hence, total taxable amount of Rs. 62,08,647/- is required to be excluded from Table-I of show cause notice on account of double taxation on one and the same amount and service tax demand is required to be reduced by Rs. 1,91,847/- and produced certificate dated 8.6.2021 issued by M/s. Kanaiya R. Asnani & Co., Gandhidham, Chartered Accountants.

9.1 I have gone through the said certificate dated 8.6.2021 of M/s Kanaiya R. Asnani & Co., Chartered Accountants, wherein it has been mentioned that turnover of Rs. 62,08,647/- was included in Table-I and Table-II of SCN, in respect of transportation service rendered by the Appellant to M/s B. Devchand & Sons during the years 2013-14 and 2014-15. I find that the Appellant has not corroborated the said certificate with production of relevant invoices issued by them to M/s B. Devchand & Sons. Further, the Appellant had not contested this issue before the adjudicating authority nor produced any documentary evidences in this regard. Since, the matter relating to taxability of transportation income is being remanded to the adjudicating authority vide this order, the adjudicating authority is also directed to verify whether taxable value of transportation



service rendered to M/s B. Devchand & Sons has been included twice in Table-I and in Table-II of SCN for demanding service tax. The Appellant is directed to produce relevant invoices, ledger account of M/s B. Devchand & Sons and other documents, if any, before the adjudicating authority for verification.

10. The Appellant has also contended that services by way of transportation of goods by road is covered by sub-clause (p) of Section 66 D of Finance Act, 1994 containing the negative list of services. Hence, confirmation of service tax demand of Rs. 7,67,389/- is not sustainable.

10.1 I find it is pertinent to examine the provisions contained in clause (p) of Section 66D of the Act which are reproduced as under:

“SECTION 66D. Negative list of services. — The negative list shall comprise of the following services, namely :—

- (p) services by way of transportation of goods—
 (i) by road except the services of—
 (A) a goods transportation agency; or
 (B) a courier agency;

...”

10.2 As per above provisions, services by transportation of goods by road is covered under negative list and consequently not liable to service tax, however, exception is carved out under sub-clause (p)(i)(A) thereby excluding the services of goods transportation agency from said negative list. Hence, services of transportation of goods by road provided by goods transportation agency was liable to service tax. In the present case, the Appellant was registered under GTA service and they have also not disputed that they are not goods transportation agency. Hence, transportation services rendered by them to B. Devchand & Sons is not covered under clause (p) of Section 66D of the Act. I discard the contention being devoid of merit.

11. The Appellant has contended that the Show Cause Notice is time barred inasmuch as there is no suppression with intent to evade Service Tax. The entire income on which Service Tax is demanded is duly recorded in the books of account. Moreover, the issue is of interpretation revolving around scope of Cargo Handling Service. Hence, the impugned order advocating invocation of extended period for the purpose of demanding Service Tax under the proviso to Section 73(1), interest under the provisions of Section 75 and imposing mandatory



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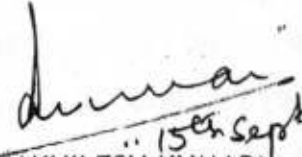
13. In view of above, I set aside the impugned order to the extent of confirmation of service tax demand of Rs. 2,96,044/- and remand the matter to the adjudicating authority as per finding given in para 8.1 and para 9.1 above. The remaining portion of the impugned order is upheld.

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

14. The appeal filed by the Appellant is disposed off as above.

सत्यापित,

विपुल सिंह
अधीक्षक (आपिल)


15th September, 2018
(AKHILESH KUMAR)
Commissioner (Appeals)

By RPAD

To, M/s. Radhika Handling Office No. 212, Patel Centre Owner's Association, Plot No. 41, Sector 9/A, Gandhidham.	सेवा में, राधिका हैंडलिंग ऑफिस नं० 212, पटेल सेंटर ओनर्स असोशिएशन, प्लॉट नं० 41, सैक्टर 9/ए, गांधीधाम।
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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, गांधीधाम आयुक्तालय, गांधीधाम को आवश्यक कार्यवाही हेतु।
- 3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गांधीधाम (अर्बन) मण्डल, गांधीधाम आयुक्तालय, गांधीधाम, को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फ़ाइल।

