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

Tele Fax No. 0281 – 2477952/2441142Email: commrappl3-cexamd@nic.in

रजिस्टर्ड डाक ए.डी.द्वारा:- **DIN-20220564SX0000222AE5**

क	अपील / फाइलसंख्या/ Appeal /File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/3/EA2/GDM /2021	31/AC/Anjar Bhachau/20-21	17-02-2021
	V2/4/EA2/GDM /2021	32/AC/Anjar Bhachau/20-21	17-02-2021
	V2/6/EA2/GDM /2021	34/AC/Anjar Bhachau/20-21	17-02-2021

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

KCH-EXCUS-000-APP-009 TO 011-2022

आदेश का दिनांक / Date of Order: **20.05.2022**

जारी करने की तारीख / Date of issue: **23.05.2022**

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 एवंसेवाकर,राजकोट / जामनगर / गांधीधाम। 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 :-

1. **M/s Bhagu Arjanbhai Mata, Post- Ratnal, Tal- Anjar, Kutch-370 105.**
2. **M/s Ramji Hirabhai Devani, Post- Ratnal, Tal- Anjar, Kutch-370 105.**
3. **M/s Naran Hira Ahir, Post- Ratnal, Tal- Anjar, Kutch-370 105.**

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 उत्पादन 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 अपीलें सीमा शुल्क,केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट)की पश्चिम क्षेत्रीय पीठिका,,द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- ३८००१६को की जानी चाहिए ।/

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील)नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए । इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की 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 क्रमश: 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 सार्वजिनक 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 अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन 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 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 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 क्रमश: 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 सार्वजिनक 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 अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन 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 of 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 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 For 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 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) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट 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 स्थगन अर्ज़ी एवं अपील को लागू नहीं होंगे।/

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 कोपुनरीक्षण आवेदन :**
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलो में, केंद्रीय उत्पाद शुल्क अधिनियम,1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर 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:

(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 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.

(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 क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न. 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायावधि पर या बाद में पारित किए गए है।/
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 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 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 आदेशो का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय नयायाधिकरण को एक अपील या केंद्रीय 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 Ra. 1 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क 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 वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। /
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

(G) उच्चतर 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 Deputy Commissioner, CGST, Anjar-Bhachau Division, Gandhidham has filed following appeals on behalf of the Commissioner, Central GST & Central Excise, Gandhidham (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 Orders-in-Original mentioned in Column No. 5 of Table below (hereinafter referred to as 'impugned orders') passed by the Deputy Commissioner, CGST, Anjar Bhachau Division, Gandhidham (*hereinafter referred to as* 'adjudicating authority') in the case of parties mentioned in Table below (*hereinafter referred to as* 'Respondents') :

Sl. No.	Appeal No.	Name of party (M/s)	Show Cause Notice No. and date	Order-in-Original No. & Date	Service Tax involved (Amount in Rs.)
1	2.	3.	4.	5.	6.
1.	V2/3/EA2/ GDM/2021	Bhagu Arjanbhai Mata	V/15-9/Anjar-Bhachau/ TPD/2020-21 dated 18.9.2020	31/DC/Anjar-Bhachau/2020-21 dated 17.2.2021	18,63,324/-
2.	V2/4/EA2/ GDM/2021	Ramji Hirabhai Devani	V/15-9/Anjar-Bhachau/ TPD/2020-21 dated 18.9.2020	32/DC/Anjar-Bhachau/2020-21 dated 17.2.2021	18,50,419/-
3.	V2/6/EA2/ GDM/2021	Naran Hira Ahir	V/15-9/Anjar-Bhachau/ TPD/2020-21 dated 18.9.2020	34/DC/Anjar-Bhachau/2020-21 dated 17.2.2021	45,13,588/-

1.1 Since issue involved in above appeals is common, they are taken up together vide this common order.

2. The facts of the case, in brief, are that the Respondents were engaged in providing services. On scrutiny of information received from the Income Tax Department, it was found that the Respondents had earned income for providing services during the F.Y. 2014-15. However, the Respondents were not found registered with Service Tax Department. To ascertain whether the services provided by the Respondents were liable to service tax or not, the Respondents were asked to furnish relevant information / documents. Since, no response was received from the Respondents, service tax was determined on

the basis of information received from the Income Tax Department.

2.1 The Show Cause Notices as mentioned in Column No. 4 of Table above were issued to the Respondents for demand and recovery of service tax mentioned in Column No. 6 of Table above 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 Notices were adjudicated by the adjudicating authority vide the impugned orders mentioned at Column No. 5 of Table above, who dropped the demand. The Adjudicating authority observed that the Respondents had provided transportation service during the FY 2014-15 as owner of trucks and not as GTA and hence, said service was covered under negative list of service in terms of Section 66D(p) of the Act and the Respondents were not liable to pay service tax.

3. The impugned orders were reviewed by the Appellant Department and appeals have been filed on the grounds that,

(i) The impugned orders passed by the adjudicating authority are not correct, legal and proper.

(ii) That the Respondents had provided the service of 'transportation of goods by road' and raised bills to the recipients and therefore they fall under the category of GTA and the service provided by them become taxable service. Since, in this case the status of service recipient is not declared by the Respondents so as to determine whether they fall under the category as specified under Rule 2(1)(d)(B) of the Service Tax Rules, 1994, the Respondents are liable to pay service tax and relied upon case law of Kisan Sahkari Chini Mills Ltd. - 2019 (29) G.S.T.L. 292 (All.).

4. Personal Hearing in the matter was scheduled in virtual mode through video conferencing on 24.3.2022, 5.4.2022 and 27.4.2022 and communicated to the Respondents by letters sent through Registered Post. However, no consent was received for attending virtual hearing nor any request for adjournment of hearing was received. I, therefore, proceed to decide the appeals on the basis of grounds raised by the Appellant Department and available records.

5. I have carefully gone through the facts of the case, the impugned orders,

and appeal memorandum filed by the Appellant Department. The issue to be decided in the present appeals is whether the adjudicating authority has correctly dropped the proceedings initiated against the Respondents or not.

6. On perusal of the records, I find that proceedings were initiated against the Respondents on the basis of information received from the Income Tax Department, which indicated that the Respondents had earned income for providing services during the F.Y. 2014-15 but were not registered with the Service Tax Department. The adjudicating authority, after considering the submissions of the Respondents, came to conclusion that the Respondents had provided transportation service during the FY 2014-15 as owner of trucks and not as GTA and hence, said service was covered under negative list of service in terms of Section 66D(p) of the Act and held that the Respondents were not liable to service tax.

6.1 The Appellant Department has contended that the Respondents had provided the service of 'transportation of goods by road' and raised bills to the recipients and therefore they fall under the category of GTA and the service provided by them become taxable service. It is further contended that since the status of service recipient is not declared by the Respondents so as to determine whether they fall under the category as specified under Rule 2(1)(d)(B) of the Service Tax Rules, 1994, the Respondents are liable to pay service tax and relied upon case law of Kisan Sahkari Chini Mills Ltd. - 2019 (29) G.S.T.L. 292 (All.).

7. Since the Appellant Department has sought to cover the Respondents under the category of GTA, it is pertinent to examine the term 'Goods Transport Agency' defined under Section 65(50b) of the Act, which is reproduced as under:

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

7.1 Considering the above definition, it is imperative that the Respondents were supposed to issue consignment notes by whatever name called, in order to cover them under the definition of GTA. The adjudicating authority has held that the Respondents had provided transportation service as owner of trucks and not as GTA. The Appellant Department has not brought on record any evidence which indicate that the Respondents had issued consignment notes while

providing transportation service. Merely providing transportation service and raising bills are not sufficient to cover any person under Goods Transport Agency under Section 65(50b) of the Act. The contention of the Appellant Department is, thus, not legally sustainable. Since, the Appellant Department failed to prove that the Respondents were covered under the category of GTA, it is futile to examine whether service recipient of the Respondents were specified person under Rule 2(1)(d)(B) of the Service Tax Rules, 1994 or not.

7.2 I further find that the Appellant Department has raised a new ground in the appeal, which was not part of the Show Cause Notice, for contesting exemption granted by the adjudicating authority under Section 66D(p) of the Act. Ideally, such aspect should have been 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.

8. I also take note of the Instruction 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. The adjudicating authorities were also advised to pass a judicious order after proper appreciation of facts and submission of the notice. The relevant portion of the said Instruction is reproduced as under:

> "Representations have been received from various trade bodies and associations regarding instances of indiscriminate issuance of demand notices by the field formations on the basis of ITR-TDS data received from Income Tax Department.
>
> 2. In this regard, the undersigned is directed to inform that CBIC vide instructions dated 01.04.2021 and 23.04.2021 issued vide F. No. 137/47/2020-ST, has directed the field formations that while analysing ITR-TDS data received from Income Tax, a reconciliation statement has to be sought from the taxpayer for the difference and whether the service income earned by them for the corresponding period is attributable to any of the negative- list services specified in Section 66D of the Finance Act, 1994 or exempt from payment of Service Tax, due to any reason. IT was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.

3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner/Chief Commissioner (s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention 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."

8.1 I find that the impugned orders passed by the adjudicating authority are in consonance with the instruction dated 26.10.2021 supra issued by the Board. After examining the contentions raised by the Appellant Department vis-à-vis facts emerging from records, I am of the considered opinion that impugned orders do not require any interference.

9. I have examined the relied upon case law of Kisan Sahkari Chini Mills Ltd. reported as 2019 (29) G.S.T.L. 292 (All.). In the said case, the party was engaged in the manufacture of cane sugar and molasses. They were procuring sugar cane from farmers, which was transported to them by individual truck owners who charge for transportation of sugarcane by presenting bills. Proceedings were initiated against the said party on the ground that they were required to discharge service tax being recipient of transportation service. The SCNs were issued to the party demanding service tax for the period from F.Y. 2004-05 to F.Y. 2007-08, which were confirmed by the adjudicating authority. The matter reached before the Tribunal, who allowed the appeal of the party. The Department filed appeal before the Hon'ble High Court who allowed the appeal by holding that transporters who transported the sugarcane were covered by the definition of "Goods Transport Agency" under Section 65(50b) of Finance Act, 1994 and hence, assessee was liable to pay service tax being within the definition of "person liable to pay service tax" under Rule 2(d)(v) of the service Rules. However, in the present case, the Respondents had provided transportation service as owner of trucks and not as GTA and that service rendered by them were covered under negative list of service under Section 66D(p) of the Act, as held by the adjudicating authority in the impugned order. The Appellant Department has not been able to prove that the Respondent were GTA within the meaning of Section 65(50b) of the Act. Further, period involved in the said case law was prior to 1.7.2012 i.e. prior to negative list regime

whereas the present case was covered in negative list of service in terms of Section 66D(p) of the Act. The facts involved in the present case is, thus, different and distinguishable from relied upon case law and consequently, said case law is not applicable to present case.

10. Apart from above, it is observed that demand pertains to F.Y. 2014-15 and last date for issuance of Show Cause Notice by invoking extended period of limitation under proviso to Section 73(1) of the Act was 25.4.2020. However, the Show Cause Notices were issued to the Respondents on 18.9.2020, which is beyond limitation prescribed under proviso to Section 73(1) of the Act. Thus, Show Cause Notices are not sustainable on limitation as well.

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

12. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।

12. The appeals filed by the Appellant Department stand disposed off in above terms.

सत्यापित,

विपुल शाह
अधीक्षक (अपील)

(AKHILESH KUMAR)
Commissioner (Appeals)

By RPAD

To,	सेवा में,
1. M/s Bhagu Arjanbhai Mata Post Ratnal, Taluka :Anjar, District Kutch.	मेसर्स भगू अर्जनभाई माता पोस्ट रत्नाल, तालुका : अंजार, जिला कच्छ।
2. M/s Ramji Hirabhai Devani Post Ratnal, Taluka :Anjar, District Kutch.	मेसर्स रामजी हीराभाई देवानी पोस्ट रत्नाल, तालुका : अंजार, जिला कच्छ।
3. M/s Naran Hira Ahir Devani Sheri, Near Railway Station, Post Ratnal, Taluka :Anjar, District Kutch.	मेसर्स नारन हीरा अहिर देवानी शेरी, रेलवे स्टेशन के पास, पोस्ट रत्नाल, तालुका : अंजार, जिला कच्छ।

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, अंजार भचाऊ मंडल को आवश्यक कार्यवाही हेतु।
4) गार्ड फ़ाइल।