



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



द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan

रेस कोर्स रिंग रोड / Race Course Ring Road

राजकोट / Rajkot - 360 001

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

रजिस्टर्ड डाक ए.डी.द्वारा:-

DIN-20220564SX0000111C69

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/7 -15, 17-25 /EA2/GDM /2021	20to41/ST-TPD/AC/2020-21	17-03-2021

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

KCH-EXCUS-000-APP-022-TO-039-2022

आदेश का दिनांक /

Date of Order:

20.05.2022

जारी करने की तारीख /

Date of issue:

23.05.2022

श्री अखिलेश कुमार, आयुक्त (अपील), 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 / 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 of the Appellant/Respondent :-

1. Bimalsinh Mahendrasinh Jadeja (M/s Shital Roadlines), 2. Teekmaran Purkharam Choudhary, 3. Agrawal Cargo Carriers, 4. Parash Jethanand Ladhar, 5. Parash Jethanand Ladhar (HUF), 6. Dhanpati Somchand Shah, 7. Kanabhai Bhachubhai Ahir (HUF), 8. Mahesh Tirathdas Mithwani, 9. Laxminarayan Khatwa, 10. Shree Chamunda Roadlines, 11. Kanaiya Lal Kodaram, 12. Bharat Kanabhai Ahir, 13. Prakash Tirathdas Mithwani, 14. Govind Bacha Baya, 15. Narabhai Kanabhai Ayar (HUF), 16. Vinodkumar Fundanal Sharma 17. Hasamukh Hamir Chaiya 18. Kankuben Karshan Chaiya

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 अपील के अलावा शेष सभी अपील सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असारवा 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) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी 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 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 सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (जिनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी 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 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 shall be accompanied by a fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than 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 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 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, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये 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

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष 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 :

- (i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

- (C) भारत सरकार को पुनरीक्षण आवेदन :
Revision application to Government of India:

इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन 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 an 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 इयूटी 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 तरीख 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.

- (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 संरेषण 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।

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.

- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिए। इस तथ्य के होते 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 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 Appellate Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 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 और भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

- (G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbcc.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.cbcc.gov.in.



:: ORDER-IN-APPEAL ::

The Deputy Commissioner, CGST Gandhidham Urban 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 No. 20-41/ST-TPD/AC/2020-21 dated 17.3.2021 (hereinafter referred to as 'impugned orders') passed by the Assistant Commissioner, CGST, Gandhidham Urban 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	Service Tax involved (Amount in Rs.)
1	2.	3.	4.	5.
1.	V2/7/EA2/GDM/2021	Bimalsinh Mahendrasinh Jadeja (M/s Shital Roadlines)	SCN/271/TPD/ (Unregistered) /2020-21 dated 22-12-2020	3094174 /-
2.	V2/8/EA2/GDM/2021	Teekmaram Purkharam Choudhary	SCN/497/TPD/ 2020-21 dated 03-12-2020	769103 /-
3.	V2/9/EA2/GDM/2021	Agrawal Cargo Carriers	SCN/500/TPD/ 2020-21 dated 03-12-2020	4002047 /-
4.	V2/10/EA2/GDM /2021	Paresh Jethanand Ladhar	SCN/506/TPD/ 2020-21 dated 03-12-2020	2426335 /-
5.	V2/11/EA2/GDM /2021	Paresh Jethanand Ladhar (HUF)	SCN/511/TPD/ 2020-21 dated 03-12-2020	1829958 /-
6.	V2/12/EA2/GDM /2021	Dhanpati Somchand Shah	SCN/537/TPD/ 2020-21 dated 03-12-2020	1011241 /-
7.	V2/13/EA2/GDM /2021	Kanabhai Bhachubhai Ahir (HUF)	SCN/538/TPD/ 2020-21 dated 03-12-2020	987419 /-
8.	V2/14/EA2/GDM /2021	Mahesh Tirathdas Mithwani	SCN/552/TPD/ 2020-21 dated 04-12-2020	746999 /-
9.	V2/15/EA2/GDM /2021	Laxminarayan Khatwa	SCN/553/TPD/ 2020-21 dated 04-12-2020	743445 /-




10.	V2/17/EA2/GDM/2021	Shree Chamunda Roadlines	S.CN/557/TPD/2.020-21 dated 04-12-2020	723442 /-
11.	V2/18/EA2/GDM/2021	Kanaiya Lal Kodarani	SCN/559/TPD/2020-21 dated 04-12-2020	709302 /-
12.	V2/19/EA2/GDM/2021	Bharat Kanabhai Ahir	SCN/584/TPD/2020-21 dated 04-12-2020	564332 /-
13.	V2/20/EA2/GDM/2021	Prakash Tirathdas Mithwani	SCN/594/TPD/2020-21 dated 04-12-2020	521389 /-
14.	V2/21/EA2/GDM/2021	Govind Bacha Bava	SCN/639/TPD/2020-21 dated 07-12-2020	394177 /-
15.	V2/22/EA2/GDM/2021	Naranbhai Kanabhai Ayar (HUF)	SCN/643/TPD/2020-21 dated 07-12-2020	391615 /-
16.	V2/23/EA2/GDM/2021	Vinodkumar Fundanlal Sharma	SCN/672/TPD/2020-21 dated 08-12-2020	307501 /-
17.	V2/24/EA2/GDM/2021	Hasmukh Hamir Chaiya	SCN/715/TPD/2020-21 dated 09-12-2020	1623934 /-
18.	V2/25/EA2/GDM/2021	Kankuben Karshan Chaiya	SCN/716/TPD/2020-21 dated 09-12-2020	1445363 /-

1.1 Since issue involved in above appeals is common, all appeals 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 Respondents, service tax was determined on the

[Handwritten signature]



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. 5 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 who dropped the demand. The Adjudicating authority, after scrutiny of Form 26AS, Transportation bills & Transportation ledgers for the FY 2014-15 and declarations of GTA in cases where transport vehicles were provided on hire basis to other GTA, came to conclusion that the Respondents had rightly availed the benefit of Notification No. 25/2012-ST dated 20.6.2012 and Notification No. 30/2012-ST dated 20.6.2012.

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

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

(ii) The adjudicating authority simply drawn conclusion that benefit of Exemption Notification No. 25/2012-ST dated 20.6.2012 and Notification No. 30/2012-ST dated 20.6.2012 were available to parties without giving any finding and without specifically mentioning who were GTA and who had provided only vehicle on hire to GTA and whether the service recipients were falling under specific person mentioned under Rule 2(d)(1)(B) of the Service Tax Rules, 1994 and under the persons mentioned at para 1A(ii) of Notification No. 30/2012-ST dated 20.6.2012 or otherwise.

(iii) The impugned order is not specific and non speaking order and therefore the same is not legal and proper and relied upon judgement of the Hon'ble Supreme Court passed in the case of M/s Tata Engineering & Locomotive Co. Ltd - 2006 (203) ELT 360 (S.C.).

4. The Respondent Nos. 4,5,7,10,12, 14, 15, 16, 17 and 18 filed Cross Objection vide letters dated 23.8.2021, *inter alia*, contending that they had



du

made detailed submission to the adjudicating authority to prove that they were not liable to service tax. They were providing Goods Transport Agency Service and had provided services either to company or partnership firm only. They had also provided service of supplying vehicles on hire to other GTA. In both situation, they were not liable to pay service tax and submitted copy of reply submitted to the adjudicating authority.

4.1 Respondent No. 1 filed Cross Objection vide letter dated 28.3.2022, *inter alia*, contending that, they were engaged in providing transportation service. The liability to pay service tax on transportation service is on recipient of service as per Notification No. 30/2012-ST dated 20.6.2012. In their case, the service receivers were private limited company, LLP, Partnership firms etc. and also paid freight, hence, liability to pay service tax was on them. They have submitted written reply along with documents in reply to Show Cause Notice issued to them and requested to close the appeal proceedings.

4.2 Respondent No. 3 filed Cross Objection vide letter dated 27.4.2022, *inter alia*, contending that,

- (i) They were engaged in providing transportation of goods by road service and also provided trucks on hire basis to GTA. As per Notification No. 30/2012-ST dated 20.6.2012, service tax is payable on reverse charge basis. The adjudicating authority has duly verified list of recipient of service and then only passed the order. Only because it is not written in OIO, it does not mean that the adjudicating authority has not verified the details of recipient.
- (ii) That SCN based only on ITR/Form 26AS without specifying the nature of service is not valid. The TDS under the Income Tax Act, 1961 is applicable on specified transactions above the specified limit. The applicability of TDS does not made such transactions as service under the Finance Act, 1994.
- (iii) That larger period of limitation cannot be invoked in SCN. When the information in Form 26AS was available with the Government from day one, the allegation of suppression of facts cannot be made against them. Therefore, SCN issued to them on 3.12.2020 for the period from 2014-15 under Section 73(1) of the Act is barred by limitation.

du



4.3 Respondent No. 6 filed Cross Objection on 25.4.2022, *inter alia*, contending that,

- (i) They owned three tankers which was given on hire to the GTA M/s Suresh Logistics and earned income of Rs. 81,81,566/- in the year 2014-15 and such service was exempted from service tax by virtue of Entry No. 22(b) of Mega Exemption Notification No. 25/2012-ST dated 20.6.2012. They submitted the above facts before the adjudicating authority along with documentary evidence. The adjudicating authority dropped the proceedings after giving clear findings that the assessee was eligible to claim exemption of relevant entry of exemption notification.
- (ii) The SCN was issued on 3.12.2020 for the F.Y. 2014-15, which is much beyond the prescribed time limit under Section 73(1) of the Act.

4.4 Respondent No. 11 filed Cross Objection on 25.4.2022, *inter alia*, contending that,

- (i) They were engaged in business of giving on hire a means of transportation of goods to a goods transport agency (GTA) and the said service was exempt from service tax as per Notification No. 25/2012-ST dated 20.6.2012. They submitted relevant documents before the adjudicating authority who dropped the proceedings vide order dated 17.3.2021.
- (ii) The SCN was issued to them by invoking proviso to Section 73(1) of the Act however, ingredients necessary for invocation of extended period of limitation is absent in their case. Thus, Show Cause Notice itself is barred by limitation and therefore unsustainable in law.

5. 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. Hearing was attended by following Respondents:

- (i) Shri Paresh Vasani, appeared on behalf of Respondent No. 1 on 25.3.2022. He stated that the firm had provided GTA service to body corporate/ partnership firm and liability to pay service tax was on service recipient.
- (ii) Shri Abhishek Doshi, C.A. appeared on behalf of Respondent No. 3 on 27.4.2022. He reiterated the submission made in Cross Objection to



dey

appeal.

(iii) Shri Ravi Tanna, C.A. appeared on behalf of Respondent No. 6 on 27.4.2022. He reiterated the submission made in Cross Objection to appeal. He further stated that part of demand is also time barred.

(iv) Shri Neel Pomal, C.A. appeared on behalf of Respondent No. 11 on 27.4.2022. He reiterated the submission made in Cross Objection to appeal.

6. I have carefully gone through the facts of the case, the impugned order, appeal memorandum, Cross Objections filed by the Respondents as well as oral submission made at the time of hearing. 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.

7. 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 Service Tax Department. The adjudicating authority verified Form 26AS, Transportation bills, Transportation ledgers and declaration of GTAs submitted by the Respondents and held that the Respondents had rightly availed the benefit exemption Notification No. 25/2012-ST dated 20.6.2012 and Notification No. 30/2012-ST dated 20.6.2012 and dropped the demand raised in the SCNs.

7.1 The Appellant Department has contended that the impugned order is not specific and non-speaking order inasmuch as the adjudicating authority simply drawn conclusion that benefit of Exemption Notification No. 25/2012-ST dated 20.6.2012 and Notification No. 30/2012-ST dated 20.6.2012 were available to parties without giving any finding and without specifically mentioning who were GTA and who had provided only vehicles on hire to GTA and whether the service recipients were falling under specific person mentioned under Rule 2(d)(1)(B) of the Service Tax Rules, 1994 and under the persons mentioned at para 1A(ii) of Notification No. 30/2012-ST dated 20.6.2012 or otherwise.

8. I find that the adjudicating authority has adjudicated 22 Show Cause Notices issued to 22 different entities under common order. As narrated at Para 21 of the impugned order, the adjudicating authority had verified Form 26AS,

du



Transportation bills & Transportation ledgers for the F.Y. 2014-15 and declarations of GTA submitted by the Respondents in cases where transport vehicles were provided on hire basis to other GTA and came to conclusion that the Respondents had rightly availed the benefit of Exemption Notification No. 25/2012-ST dated 20.6.2012 and Notification No. 30/2012-ST dated 20.6.2012 and consequently, the Respondents were not liable to pay service tax. The Appellant Department has not brought on record any evidences indicating that the Respondents were not eligible for the benefit of said notifications. Though the adjudicating authority has not specifically mentioned about Respondents who had provided only vehicles on hire to GTA and whether the service recipients were falling under specified person mentioned at para 1A(ii) of Notification No. 30/2012-ST dated 20.6.2012 or otherwise, however, this cannot be a ground to nullify entire proceedings considering the fact that the adjudicating authority had allowed the benefit of said exemption notifications only after verification of documents submitted by the Respondents, which is not disputed by the Appellant Department.

8.1 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-



dy

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.”

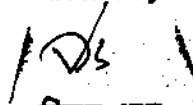
8.2 I find that the impugned order passed by the adjudicating authority is in consonance with the Instruction dated 26.10.2021 supra issued by the Board. After examining the contentions raised by the Appellant Department vis-à-vis facts emerging from records, I am of the considered opinion that impugned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

9. Apart from above, it is observed that demand pertains to F.Y. 2014-15 and last date for issuance of Show Cause Notices by invoking extended period of limitation under proviso to Section 73(1) of the Act was 25.4.2020, but the Show Cause Notices were issued to the Respondents in the month of December, 2020, which is beyond limitation prescribed under Section 73 of the Act. Thus, Show Cause Notices are not sustainable on limitation as well.

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

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

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

सत्यापित,

 बिपुल शाह
 अधीक्षक (अपील)


 AKHILESH KUMAR
 Commissioner (Appeals)



By RPAD

To, 1. M/s Bimalsinh Mahendrasinh Jadeja (Shtal Roadlines) Office No. 02, 2nd Floor, Shaikh Chamber, Plot No. 16A, D.B.Z. South, Gandhidham.	सेवा में, मेसर्स बिमलसिंह महेंद्रसिंह जडेजा (शीतल रोडलाइन्स) कार्यालय संख्या 02, दूसरी मंजिल, शेख चेंबर, प्लॉट नंबर 16 ए, डी.बी.जेड. दक्षिण, गांधीधाम
2. M/s Teekmaram Purkharam Choudhary, M R Shah Chamber, Plot No.355, Sector-12B, Gandhidham.	मेसर्स टेकमराम पुरखाराम चौधरी, एम आर शाह चेंबर, प्लॉट नंबर 355, सेक्टर- 12बी, गांधीधाम 370201
3. M/s Agrawal Cargo Carriers, Shop No. D71, Gandhidham.	मेसर्स अग्रवाल कार्गो कैरियर्स, शॉप नंबर डी71, गांधीधाम-370201
4. M/s Paresh Jethanand Ladhar, 345-A, Apna Nagar, Gandhidham.	मेसर्स परेश जेठानंद लधर, 345-ए, अपना नगर, गांधीधाम-370201
5. M/s Paresh Jethanand Ladhar (HUF), 345-A, Apna Nagar, Gandhidham.	मेसर्स परेश जेठानंद लधर (एचयूएफ), 345-ए, अपना नगर, गांधीधाम-370201
6. M/s Dhanpati Somchand Shah, Shop No.9, Ground Floor, Raj deep Complex, Plot No. 15, Sector 9-C, Opp-Dena Bank, Gandhidham.	मेसर्स धनपति सोमचंद शाह, दुकान नंबर 9, भूतल, राज डीप कॉम्प्लेक्स, प्लॉट नंबर 15, सेक्टर 9-सी, देना बैंक के सामने, गांधीधाम 370201
7. M/s Kanabhai Bhachubhai Ahir (HUF), 345- A, Apna Nagar, Gandhidham.	मेसर्स कानाभाई भचुभाई अहीर (एचयूएफ), 345 ए, अपना नगर, गांधीधाम-370201
8. M/s Mahesh Tirathdas Mithwani, Radhaswami Roadways, Shop No.1, Mohan Market, Plot No.58, Sector-9, Gandhidham.	मेसर्स महेश तीरथदास मिथवानी, राधास्वामी रोडवेज, दुकान नंबर 1, मोहन मार्केट, प्लॉट नंबर 58, सेक्टर-9, गांधीधाम 370201
9. M/s Laxminarayan Khatwa, M R Shah Transport, Plot No.355, Sector 12-B, Gandhidham.	मेसर्स लक्ष्मीनारायण खटवा, एम आर शाह ट्रांसपोर्ट, प्लॉट नंबर 355, सेक्टर 12-बी, गांधीधाम-370201
10. M/s Shree Chamunda Roadlines, Shop No.21, Plot No.79, A.S. Chamber, Sector 9-C, National Highway, Gandhidham.	मेसर्स श्री चामुंडा रोडलाइन्स शॉप नंबर 21, प्लॉट नंबर 79, ए एस चेंबर, सेक्टर 9-सी, राष्ट्रीय राजमार्ग, गांधीधाम - 370201
11. M/s Kanaiya Lal Kodarani, Agrawal Road Line Pvt. Ltd., Ward 12-B, Plot No.356, Gokul Park, Tagore Road, Gandhidham.	मेसर्स कनैया लाल कोडरानी, अग्रवाल रोड लाइन प्रा. लिमिटेड, वार्ड 12-बी, प्लॉट नंबर 356, गोकुल पार्क, टैगोर रोड, गांधीधाम-370201



12. M/s Bharat Kanabhai Ahir, 345-A, Apna Nagar, Gandhidham.	मेसर्स भरत कानाभाई अहीर, 345-ए, अपना नगर, गांधीधाम-370201
13. M/s Prakash Tirathdas Mithwani, Radhaswami Roadways, Shop No.1, Mohan Market, Plot No.58, Sector-9, Gandhidham.	मेसर्स प्रकाश तीरथदास मिथवानी, राधास्वामी रोडवेज, दुकान नंबर 1, मोहन मार्केट, प्लॉट नंबर 58, सेक्टर-9, गांधीधाम 370201
14. M/s Govind Bacha Bava, J R Roadlines Pvt. Ltd., Plot No.6, Sector-10 C, Gandhidham.	मेसर्स गोविंद बच्चा बावा, जे आर रोडलाइन्स प्रा. लिमिटेड, प्लॉट नंबर 6, सेक्टर -10 सी, गांधीधाम 370201
15. M/s Naranbhai Kanabhai Ayar (HUF), 345-A, Apna Nagar, Gandhidham.	मेसर्स नारनभाई कानाभाई अय्यर (एचयूएफ), 345-ए, अपना नगर, गांधीधाम-370201
16. M/s Vinodkumar Fundanlal Sharma, R No 40, Royal Villa, Antarjal, Gandhidham.	मेसर्स विनोदकुमार फंडनलाल शर्मा, आर नं 40, रॉयल विला, अंतरजल, गांधीधाम
17. M/s Hasmulch Hamir Chaiya, Jigar Bulk Carrier, 30, Tanker Association Building, Transport Nagar, Gandhidham.	मेसर्स हसमुल्च हमीर छैया, जिगर बल्क कैरियर, 30, टैंकर एसोसिएशन बिल्डिंग, ट्रांसपोर्ट नगर, गांधीधाम-370201
18. M/s Kankuben Karshan Chaiya, Jigar Logistics, 30, Tanker Association Building, Transport Nagar, Gandhidham.	मेसर्स कंकुबेन करण छैया, जिगर लॉजिस्टिक्स, 30, टैंकर एसोसिएशन बिल्डिंग, ट्रांसपोर्ट नगर, गांधीधाम-370201

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 (शहरी) मंडल को आवश्यक कार्यवाही हेतु।

✓ 4) गार्ड फाइल।

