

::आयुक्त (अपीस्स) का कार्यासय,वस्तु एवं सेवा करऔरकेन्द्रीय उत्पाद शुस्कः: O/O THE COMMISSIONER (APPEALS), GST &CENTRAL EXCISE

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





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रिक्टर्ड डाक ए.डी.दवाराः-

DIN-20220564SX00008378B3

अपीतः / फाइससंख्यः/

मूल आदेश सं /

दिनांक/

Appeal /File No.

O.J.O. No.

Date

V2/37/EA2/GDM /2021

49 to 53/ST-TPD/AC/2020-21

19-03-2021

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

KCH-EXCUS-000-APP-040-2022

आदेश का दिनांक /

जारी करने की तारीख /

23.05.2022

Date of Order:

20.05.2022

Date of issue:

श्री अखिलेश कृमार, आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by Shri Akhilesh Kumar, Commissioner (Appeals), Rajkot.

अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/वस्तु एवंसेवाकर,राजकोट / जामनगर / गांधीधाम। द्वारा उपरतिखित जारी मूल आदेश से सुजितः /

Arising out of above mentioned OfO 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 :-

1. M/s Heresh Jethenend Maheshwari (HUF), TCX-N-59, TCX (North), Gendhidham.

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

सीमा शुरूक ,केन्द्रीय उत्पाद शुरूक एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुरूक अधिनियम ,1944 की धारा 35B के अंतर्गत एवं वित अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नतिखित जगह की जा सकती हैं ।/ (A)

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: -

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.

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 असावी अहमदाबाद- ३८००१६कों की जोनी 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 BRRUMAN HARWAN, ASARWA Anmedabad-350016 in case of appeals office than as mentioned in pain-1(a) above 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 घाहिए। इनमें से कम एक प्रति के साथ, जहां उत्पाद शुल्क 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 कमशः 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 बँक द्वारा जारी रेखांकित बँक शुपट द्वारा किया जाना चाहिए। 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/-

अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम,1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्त 9.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 ,क्याज की माँग और लगाया गया जुमीना,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 का निर्धारित जमा शुक्क की प्रति संलग्न करें। निर्धारित शुक्क का शुगतान, संबंधित अपीलीय न्यायाधिकरण की शीखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक की ने के बेंक द्वारा जारी रेखांकित बेंक ड्रास्ट द्वारा किया जाना चाहिए। संबंधित झफ्ट का शुगतान, संबंधित अपीलीय न्यायाधिकरण की शीखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक की ने के बेंक द्वारा जारी रेखांकित बेंक ड्रास्ट द्वारा किया जाना चाहिए। संबंधित झफ्ट का शुगतान, बेंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थिगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुक्क 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, 10,000/- where the amount of service tax & interest demanded & penalty levied is more than fity Lakhs rupees, in the form of crossed bank draft in favour of the Machitant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is substant. Application made for grant of stay shall be accompanied by a fee of Rs.500/--

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(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 शुक्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुक्क दबारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुक्क 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.

दीमा शुक्क, केन्द्रीय उत्पाद शुक्क एवं सेवाकर अपीलीय प्राधिकरण (सस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुक्क पर्य सेवाकर अपीलीय प्राधिकरण (सस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुक्क एवं सेवाकर अपीलीय प्राधिकरण (सस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुक्क एवं सेवाकर अपीलीय प्राधिकरण (सस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुक्क एवं सेवाकर अपीलीय प्राधिकरण (सस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुक्क एवं सेवाकर अपीलीय प्राधिकरण (सस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुक्क एवं सेवाकर अपीलीय प्राधिकरण (सस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुक्क एवं सेवाकर अपीलीय प्राधिकरण (सस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुक्क एवं सेवाकर अपीलीय प्राधिकरण के स्वाधिकर के स्वाध (ii) 1944 की धारा 35एफ के अंतर्गत, जो की वितीय 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 अपीक्षित देय राशि दस करोड़ रुपए से अधिक न हो। केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल हैं। धारा 11 डी के अंतर्गत रकम (ii) सेनवेट जमा की ली गई गलत राशि सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम - बंशर्ते यह कि इस धारा के प्रावधान वितीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समझ

- बशते यह कि इस धारा के प्रावधान वितीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समझ विचाराधीन स्थान अज़ीं एवं अपील को लागू नहीं होगे।/

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.

भारत सरकार कोपुनरीक्षण आवेदन:
Revision application to Government of India:
इस आदेश की पुनरीक्षणणाधिका निम्निलेखित मामलो में, केंद्रीय उत्पाद शुल्क अधिनियम,1994 की धारा 35EE के प्रथमपरत्क के अंतर्गतअवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-11001, को किया जाना चाहिए। /
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Pinance, Department of Revenue, 4th Ploor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first provise to subsection (1) of Section-35B ibid: (C)

यदि मात के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से अंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक अंडार गृह से दूसरे अंडार गृह पारगमन के दौरान, या किसी अंडार गृह में या अंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी अंडार गृह में माल के माल 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 (i)

भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुक्क 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. (ii)

यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूदान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty. (iii)

सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इयूटी क्रेडीट इस अधिनयम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित अधिनियम (न. 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि 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. fivì

उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील)नियमावली,2001, के नियम 9 के अंतर्गत विनिर्दिष्ट हैं, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संसन्न 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 संसन्न 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. (v)

पुनरीक्षण आवेदन के साथ निम्नलिखित निर्घारित शुल्क की अदायगी की जानी चाहिए । जहाँ संलग्न रकम एक लाख रुपूर्य या उससे कम हो तो रुपये 200/- का शुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो (vi) 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 हैं तो प्रत्येक मूल आदेश के लिए शुल्क का मुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तस्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थित अपीलीय नयाधिकरण की 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 appeal 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. (D)

ययासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रूपये 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. **(E)**

सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीतीय न्यायधिकरण (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. **(F)**

उच्य अपीलीय प्रापिकारी 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. (G)



:: ORDER-IN-APPEAL ::

The Deputy Commissioner, CGST, Gandhidham Urban Division, Gandhidham has filed Appeal No. V2/37/EA2/GDM/2021 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 Order-in-Original No. 49-53/ST-TPD/AC/2020-21 dated 19.3.2021 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, CGST, Gandhidham Urban Division, Gandhidham (hereinafter referred to as 'adjudicating authority') in the case of M/s Haresh Jethanand Maheshwari (HUF), Gandhidham (hereinafter referred to as 'Respondent').

- 2. The facts of the case, in brief, are that the Respondent was engaged in providing services. On scrutiny of information received from the Income Tax Department, it was found that the Respondent had earned income for providing services during the F.Y. 2014-15. However, the Respondent was not found registered with Service Tax Department. To ascertain whether the services provided by the Respondent was liable to service tax or not, the Respondent was asked to furnish relevant information / documents. Since, no response was received from the Respondent, service tax was determined on the basis of information received from the Income Tax Department.
- 2.1 The Show Cause Notice No. SCN/714/TPD/2020-21 dated 3.12.2020 was issued to the Respondent for demand and recovery of service tax amount of Rs. 26,66,696/- under proviso to Section 73(1) of the Act, along with interest under Section 75. It was also proposed for imposition of penalty under Sections 77 and 78 of the Act.
- 2.2 The above Show Cause Notice was adjudicated by the adjudicating authority vide the impugned order who dropped the demand. The Adjudicating authority, after scrutiny of Form 26AS, Transportation bills and Transportation ledgers for the FY 2014-15, came to conclusion that the Respondent 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 has filed Cross Objection vide letter dated 23.8.2021, inter alia, contending that they had 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.
- 5. Personal Hearing was scheduled in virtual mode on 24.3.2022, 5.4.2022 and 27.4.2022 and communicated by letters sent through Registered Post. However, no consent for attending virtual hearing was received from the Respondent nor any request for adjournment was received. I, therefore, proceed to decide the appeal on the basis of available records.
- 6. I have carefully gone through the facts of the case, the impugned order, appeal memorandum and Cross Objection filed by the Respondent. The issue to be decided in the present appeal is whether the adjudicating authority correctly dropped the proceedings initiated against the Respondent or not.
- 7. On perusal of the records, I find that proceedings were initiated against



the Respondent on the basis of information received from the Income Tax Department, which indicated that the Respondent had earned income for providing services during the F.Y. 2014-15 but was not registered with service tax Department. The adjudicating authority verified Form 26AS, Transportation bills and Transportation ledgers submitted by the Respondent and held that the Respondent 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 SCN.

- 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.
- 7.2 The Respondent pleaded that they had made detailed submission to the adjudicating authority to prove that they were not liable to service tax. They further pleaded that they were providing Goods Transport Agency Service and had provided services either to company or partnership firm only and that they had also provided service of supplying vehicles on hire to other GTA and in both situation, they were not liable to pay service tax.
- 8. It is observed that the adjudicating authority had verified Form 26AS, Transportation bills and Transportation ledgers for the F.Y. 2014-15 submitted by the Respondent and came to conclusion that the Respondent 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 Respondent was not liable to pay service tax. The Appellant Department has not brought on record any evidences indicating that the Respondent was not eligible for the benefit of said notifications. Though the adjudicating authority has not specifically mentioned about Respondent 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 Respondent, 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-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 in the case pertains to F.Y. 2014-15 and last date for issuance of Show Cause Notice by invoking extended period of limitation under Section 73 of the Act was 25.4.2020. However, the Show Cause Notice was issued to the Respondent on 5.12.2020, which is beyond limitation prescribed under Section 73 of the Act. Thus, Show Cause Notice is not sustainable on limitation as well.
- 10. In view of above, I uphold the impugned order and reject the appeal filed by the Appellant Department.
- 11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

सत्यापित,

विपुल शाह अधीक्षमः (अयोक्स) (AKHILESH KUMAR) Commissioner (Appeals)

By RPAD

To,

M/s Haresh Jethanand Maheshwari (HUF) TCX-North 59, Gandhidham सेवा में,

मेसर्स हरेश जेठानंद महेश्वरी (एचयूएफ) टीसीएक्स-उत्तर 59, गांधीधाम । जिला कच्छ।

प्रतिलिपि:-

District Kutch.

- 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।
- 🖈) गार्ड फ़ाइल।

