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रजिस्टर्ड डाक ए.डी.द्वारा:-

DIN-20221264SX00004404C3

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	GAPPL/COM/STP/2386 /2022	178/JC/RKJ/2021-22	30-03-2022

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

KCH-EXCUS-000-APP-047-2022

आदेश का दिनांक / Date of Order:	07.12.2022	जारी करने की तारीख / Date of issue:	08.12.2022
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श्री शिव प्रताप सिंह, आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by Shri Shiv Pratap Singh, Commissioner (Appeals), Rajkot.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवा कर, 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 :-

M/s Ranjeetsinh Bhavendrasinh Jadeja, C/o Shree Ashapura Shipping Service, 392, Jain Colony Naya Anjar-370110.

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 प्रांते 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, आर० के० पुरम, नई दिल्ली, को की जानी चाहिए। /

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन 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 तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए 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 नियमावली, 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 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/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए 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 is more than five lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-



- (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, 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 (सं० 2) अधिनियम 2014 के आरंभ से पूर्व किसी 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 को 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, जहाँ 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 क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं० 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए हैं। /
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
- (v) उपरोक्त आवेदन की दो प्रतियाँ 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 प्रतियाँ 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 रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 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 दंग से किया जाना चाहिये। इस तथ्य के होते हुए भी को लिखा पढ़ी 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.
- (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 टिकट 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 संबंधित मामलों को सम्मिलित करने वाले नियमों को 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.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 ::

Shri Ranjeetsinh Bhavendrasinh Jadeja, Proprietor of M/s Jadeja Roadways, Anjar(hereinafter referred to as 'appellant') has filed present appeal against Order-in-Original No. 178/JC/RKJ/2021-22, dated 30.03.2022 (hereinafter referred to as 'impugned order'), issued by the Joint Commissioner, Central GST Anjar Bhachau Division, Gandhidham (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that the Appellant was holding Central Excise Registration Number ASOPJ6777GSD001 for the purpose of payment of Service tax. On the basis of information regarding value of gross receipts from services shared by the Central Board of Direct Taxes (Income Tax Department), it appeared that the appellant had not disclosed their true and correct gross value of services provided. Since the appellant failed to submit the required clarification and information, the tax liability was calculated on the basis of 'Best Judgement' assessment method under Section 72 of the Finance Act, 1994.

3. The facts of the case, in brief, that the Appellate had obtained registration under Service tax for the purpose of payment of service tax. They had however not discharged any Service tax liability nor filed any Service Tax Returns. Hence based on the information regarding gross value of Receipts from services, submitted by the Income Tax Department, the Service tax liability was worked out and Show Cause Notice was issued for recovery of Service tax not paid amounting to Rs. 85,61,141/- along with interest and penalty. The said Show Cause Notice was adjudicated by the adjudicating authority wherein the demand was confirmed along with applicable interest and penalty.

4. Being aggrieved with the impugned order, Appellant has preferred appeal on various grounds, *inter alia*, as below:-

- (i) That the adjudicating authority had passed the impugned order in gross violation of principle of natural justice, without verifying whether the hearing letters were in real sense communicated to the appellant.
- (ii) That the impugned order is erroneous as it was passed on the assumption and presumption that the income earned by the appellant was taxable and the activities carried out were not falling under the negative list or under any exemption.



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- (iii) That it was very clear from the documents received from the Income tax department that the appellants had provided services transportation of goods by road in the name and style of Jadeja Roadways. Hence the department was in position to ascertain and determine the nature of services provided by it. That the adjudicating authority had failed to ascertain the correct classification of the services and that after 01.07.2012 concept of classification was done away with except for Negative List, Declared services, exemption notification, RCM Notif. etc. Therefore the order without ascertaining the nature of service is totally erroneous.
- (iv) That there was no levy of Service tax on services of "Transportation of Goods By Road" under Section 66B of the Finance Act, 1994 as the same was specified under Section 66D(p) under Negative list.
- (v) That they had provided services in relation to transport of goods by road and issued "Consignment Note", hence the services merit classification under "Goods Transport Agency" as defined under Section 65B(26) of the Finance Act, 1994. That as per provisions of Section 68(2) of the Finance Act read with Rule 2(1)(d)(B) of the Service Tax Rules, 1994 read with Sr No 2 of the Notification No 30/2012-ST dated 100% Service tax was liable to be paid by the person who pays freight and not the appellant.
- (vi) That when services of transportation of goods were provided to the recipient by other GTA other than appellant and appellant had supplied trucks on hire to GTA the said service was exempted from payment of Service tax as per Sr. No 22 of Notif. No 25/2012-ST dated 20.06.2012 as amended. Therefore irrespective of the fact that services of transportation of goods by road in the capacity of GTA or by way 'transportation of goods by road' or supply of 'Trucks on rent' to GTA, in either case, they were not liable to pay service tax at all.
- (vii) That the appellant was registered with Service tax department vide Registration No ADOPJ6777GSD001 under the category of "Transport of Goods/GTA". However the adjudicating authority has held that they had not obtained any Service Tax Registration. That they had put remarks on each invoice, "Service tax to be borne & paid by you directly to the relevant Govt. authority" and "we hereby declare that we have not availed any Cenvat Credit of duty paid on inputs or capital goods used for providing the taxable services as per Notif no 12/2003-ST dated 20.06.2003. That he was under a bona fide belief that since he was not required to pay any Service tax, he was not required to file NIL return.



(Signature)

- (viii) That the impugned order was issued without verifying and understanding the information furnished by the income tax department.
- (ix) That it was unfair to issue demand notice without verifying or ascertaining facts whether the appellant had provided taxable service or otherwise. It was also unfair to allege suppression of facts especially when it was admitted on records that he was registered with the department.
- (x) They have also submitted that the demand for the period 2015-16 is badly time barred as there is no suppression of facts. The income figures were already recorded in their books of accounts and merely failure to take registration or pay tax/duty does not amount to suppression. They placed reliance upon the following decisions of Hon'ble Apex Court in their favour :
- Padmini Products Vs Collector of C.Ex. -1989 (43) ELT 195 (SC)
 - Collector of C.Ex. Vs Chemphar Drugs & Liniments - 1989 (40) ELT 276 (SC)
 - Clarifications issued by CBIC vide Circular No 1053/2/2017-CX dated 10.03.2017.
 - Collector of C.Ex. Vadodara Vs Dhiren Chemical Inds - 2002 (139) ELT 3 (SC)
- (xi) That the adjudicating authority had erroneously placed reliance on various decisions at para 5.10 of the impugned order in view of their submissions. They also added that since they had never received any communications referred in the SCN and the impugned order, extended period cannot be invoked and the order is liable to be set aside.

4.1 Personal Hearing in the matter was held on 18.10.2022. Shri Pankaj D. Rachchh, Advocate, Ms Drashti N Sejpal, CA and Ms Komal Rajan, CA, appeared on behalf of the Appellant. They reiterated the submissions made in appeal memorandum in respect of all the appeals and stated further that their service of transportation of goods by road from the port to the importer's premises was without any consignment note and it was in the Negative list vide Section 66 D(p) of the FA, 94. In other cases where goods were transported with a consignment note, the service fall under the category of GTA, where the receiver of goods was under obligation to pay Service tax on RCM basis. That they were not liable to pay Service tax in any of the cases, therefore they requested to set aside the impugned order and drop the demand, interest and penalty. They also submitted a copy of OIO No 118/ADC/RKC/2022-23 dated 08.2022 where original authority had dropped the proceedings under similar



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facts for the subsequent period in their own case.

5. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and written as well as oral submissions made by the Appellants. The issue to be decided is whether the activity carried out by the appellant is covered under category of taxable services or under the Negative list and whether the impugned order, in the facts of this case, confirming demand and imposing penalty on the Appellant is correct, legal and proper or not.

6. I find that in the present case, Show Cause Notice was issued on the basis of third party data, invoking provisions of Section 72 of the Finance Act, i.e 'Best Judgement Method'. Hence the burden of investigation is shifted through adjudication process. However, the appellant has pleaded that due to change of address, they did not receive the Show Cause Notice or hearing notices hence the impugned order was issued ex-parte without following the principles of Natural Justice. They have however, submitted the copies of their audited financial records along with the appeal memorandum.

7. In the present case the adjudicating authority has confirmed the demand under Section 72 of the Finance Act, ordering the Best Judgement Assessment in respect of Service Tax demanded from the appellants. Section 72 of the Finance Act reads as under:-

"Section 72: Best Judgement Assessment : If any person, liable to pay Service tax,

- (a) Fails to furnish the returns under Section 70;*
- (b) Having made a return, fails to assess the tax in accordance with the provisions of this Chapter or Rules made thereunder,*
the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of value of taxable services to the best of his judgement and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment."

8. On going through Section 72, it is noticed that in case assessee fails to furnish the Return under Section 70 or having made a return, fails to assess the tax in accordance with the provisions of this Chapter or Rules made thereunder, the Central Excise Officers are empowered to make the Best Judgement Assessment. In the present case, the appellant has pleaded that they did not receive copy of Show Cause Notice or hearing letters due to change of address. They have submitted the relevant data at this stage and have claimed that being GTA the liability for Service tax was on recipient of their service, not on them. The adjudicating authority had invoked Best



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Judgement Assessment for want of information/documents/ST-3 Returns, which the appellants failed to furnish.

9. As crucial new facts have been brought on record for the first time at the appeal stage, as the adjudicating authority has passed the impugned order without verification of records, as the appellant has failed to avail opportunity of natural justice extended by adjudicating authority, and as the appellants are now willing to provide the information desired by the department, I remand back the matter to the original authority for de-novo consideration after providing an opportunity of personal hearing to the appellants. The appellants are also directed to provide all the information sought for by the adjudicating authority within a month of receipt of this order.

10. Accordingly, I set aside the impugned order and remand the matter back to the adjudicating authority to decide the case afresh after taking into consideration all the documents and submissions of the appellant.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीकेसे, रिमांड के माध्यम से किया जाता है।

11. The appeal filed by the Appellant is disposed off by way of remand as above.

सत्यापित / Attested

Superintendent
Central GST (Appeals)
Rajkot

(SHIV PRATAP SINGH)
Commissioner (Appeals)

By R.P.A.D.

To, Shri Ranjeetsinh Bhavendrasinh Jadeja, Proprietor, Jadeja Roadways, C/o Shree Ashapura Shipping Service, 392, Jain Colony, NayaAnjar - 370 110 Kutch, Gujarat	सेवा मे, श्री रंजीतसिंह भावेद्रसिंह जडेजा, मालिक, जडेजा रोडवेज, सी / ओ श्री आशापुरा शिपिंग सेवा, 392, जैन कॉलोनी, नया अंजार - 370 110 कच्छ, गुजरात
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प्रतिलिपि :-

- मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- प्रधान आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गांधीधाम, आयुक्तालय, गांधीधाम, को आवश्यक

कार्यवाही हेतु।

सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क मण्डल गांधीधाम, (urban) आवश्यक कार्यवाही हेतु।

गार्ड फाइल।

