



:: आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा करऔरकेन्द्रीय उत्पाद शुल्क::  
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE

द्वितीय तल, जी एस टी भवन / 2<sup>nd</sup> 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



सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा

DIN-20220764SX00006656B9

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/4/EA2/BVR/2021	BHV-EXCUS-000-JC-VM- 001-2021-22	14-09-2021

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

**BHV-EXCUS-000-APP-005-2022**

आदेश का दिनांक /  
Date of Order: 14.07.2022 जारी करने की तारीख /  
Date of issue: 15.07.2022

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 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 & Address of the Appellant & Respondent :-

M/s. Trans Logix, Plot No. 22, Near Umi Minerals,, G.I.D.C. Dharampur Porbandar

इस आदेश (अपील) से अप्रतिबन्धित 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 उत्पाद 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 अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> 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, रुपये 5 लाख या उससे कम 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये 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 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/- रुपये 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 demanded/interest/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 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, रुपये 5 लाख या उससे कम 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये 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 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/- रुपये का निर्धारित शुल्क जमा करना होगा। /

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is 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/-.



- (ii) विद्यमान 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 प्रामाणिक 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.
- (iii) 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 रुपये से अधिक न हो।  
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है  
(i) धारा 11 की के अंतर्गत रकम  
(ii) सेनदेट जमा की नी गई गलत राशि  
(iii) सेनदेट जमा निवामावली 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 समय विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा। / For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,  
Under Central Excise and Service Tax, "Duty Demanded" shall include :  
(i) amount determined under Section 11 D;  
(ii) amount of erroneous Cenvat Credit taken;  
(iii) amount payable under Rule 6 of the Cenvat Credit Rules  
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) भारत सरकार को पुनरीक्षण आवेदन :  
**Revision application to Government of India:**  
इस आदेश की पुनरीक्षणवादीका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपत्रवृत्त के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संवद 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) मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो क्रेडिट केडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायात्रिधि 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 संश्लेषण 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 साथ्य 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 O.I.O. 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 आदेशों 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 विषया पत्री कार्य से बचने के लिए यथासंभव 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-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट नही 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 बर्णित एवं अन्य संबंधित मामलों को सम्बन्धित करने वाले निर्मा 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.cbec.gov.in](http://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](http://www.cbec.gov.in).



**:: ORDER-IN-APPEAL ::**

The Assistant Commissioner, CGST Division, Junagadh has filed Appeal No. V2/4/EA2/BVR/2021 on behalf of the Commissioner, Central GST & Central Excise, Bhavnagar (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. BHV-EXCUS-000-JC-VM-001-2021-22 dated 14.09.2021 (hereinafter referred to as 'impugned order') passed by the Joint Commissioner, Central GST & Central Excise, Bhavnagar (hereinafter referred to as 'adjudicating authority') in the case of M/s Trans Logix, Porbandar (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 various 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 were liable to service tax or not, the Respondent was asked to furnish relevant information / documents like Income Tax Return, Form 26AS, Annual financial accounts, contract/agreement etc. for the financial years 2014-15 by the Jurisdiction Range Superintendent vide letter dated 27.7.2020. Since, no response was received from Respondent, service tax was determined on the basis of information received from the Income Tax Department.

2.1 The Show Cause Notice No. V/15-53/DEM/2020-21 dated 22.9.2020 was issued to the Respondent for demand and recovery of service tax amounting to Rs. 52,54,534/- 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 by observing that,

- (i) the noticee was engaged in the business of transportation of goods by road and had provided transportation service to M/s Ultratech Cement Ltd and M/s Digvijay Cement Co. Ltd and in both cases liability to pay



*des*

service tax was under reverse charge mechanism and the respective companies were liable to pay the service tax;

(ii) The noticee was covered under negative list of services in terms of Section 66D(p)(i) of the Act and hence, demand of service tax was not sustainable.

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

(i) The adjudicating authority erred in dropping the demand of Rs. 52,54,534/- vide the impugned order.

(ii) That the adjudicating authority found that there was no evidence from which it can be established that the Noticee had issued any consignment note; that the consignees M/s Ultratech Cement Ltd and M/s Digvijay Cement Co. Ltd were liable to pay the Service Tax and not the Noticee; that the Services of Road Transport provided by the Noticee are not taxable because they are covered under the definition of Negative List under Section 66D(p)(i) of the Act. The Adjudicating Authority has failed to appreciate the legal provision that if the Noticee is not covered under the purview of the GTA services then the question of the service tax liability to be discharged under reverse charge mechanism doesn't arise. Further, the contracts between the Noticee and M/s Ultratech Cement Ltd and M/s Digvijay Cement Co. Ltd have not been examined to verify all aspects of service so provided. It is not mentioned in the impugned order whether M/s Ultratech Cement Ltd and M/s Digvijay Cement Co. Ltd have actually discharged the service tax liability or not.

(iii) It is also clear that issue of consignment note has been stipulated as a mandatory ingredient to qualify the Noticee's activity under GTA. The consignment note can be in any form having truck number, amount and load. In other words, the consignment note may not necessarily be in any format but the documents accompanying the goods identifying consignor and consignee, route of consignment enable to construe what a consignment note is. In the instant case, the Noticee has not provided any such document showing the details, viz, name of consigner & consignee, truck number, description of goods, booking date and time, delivery



address, amount etc., in support of their contention to merit their activity classifiable under 'Goods Transport Agency' and relied upon case law of S.V.R. Electricals (P) Ltd. reported in [2016 (43) S.T.R. 574 (Tri. - Hyd.)].

(iv) Issuance of a consignment note is the 'sine qua non' for a supplier of service to be considered as a Goods Transport Agency. If such a consignment note is not issued by the transporter, the service provider will not come within the ambit of goods transport agency. If a consignment note is issued, it indicates that the lien on the goods has been transferred to the transporter and the transporter becomes responsible for the goods till it's delivery to the consignee. In the instant case, neither they have provided any work order or agreement in support of their contention. Merely on the basis of invoices, it cannot be concluded that the activity of the Noticee can be merited to be qualified under GTA.

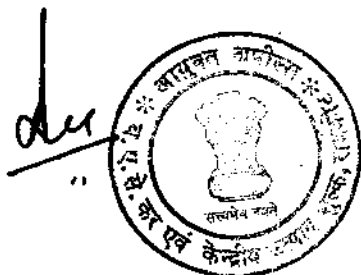
(v) The Noticee had transferred the goods (trucks) by way of hiring without transfer of right to use such goods as provided under clause (f) of the Section 66E *ibid* which is as under:

“(f) transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods;”

Therefore, the nature of services provided by the Noticee as service provider is covered under the definition of 'service' as per Section 65B (44) *ibid* and also not covered under the Negative List provided under section 66D *ibid* or under the Notification No. 30/2012-Service tax dated 30.06.2012. Thus, the services provided by the noticee is 'taxable service' as per Section 65B (51) *ibid* and subject to levy of service tax under Section 66B *ibid*.

4. The Respondent filed Cross Objection vide email dated 16.5.2022, *inter alia*, contending that,

(i) They had provided transportation service to M/s Ultratech Cement Ltd. and M/s Shri Digvijay Cement Co Ltd and in both cases, the liability to pay service was under reverse charge mechanism and the respective companies were liable to payment of service tax and submitted copy of



work order entered with M/s Ultratech Cement Ltd. wherein it was specifically mentioned the transportation of limestone.

(ii) Even if the nature of service of transportation of material of the above parties cannot be considered as GTA then also services by way of transportation of goods by road are taxable, only if the same is provided by (i) a goods transport agency: or (ii) courier agency. Services of Road Transport provided by all others are not taxable because they are covered by the Negative List under Section 66D(p)(i) of the Act. Accordingly, there was no liability to obtain service tax registration under Finance Act, 1994.

(iii) The Appellant Department sought to cover their transactions under Section 66E(f) of the Act which reads covers "transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods". The term "hiring, leasing, licensing or in any such manner" contained in said provision are used interchangeable for any rental agreement. When any immovable / movable assets are given on rent, the terms of hiring or leasing or licensing are used. In the given case there was specific contract between the assessee and the companies for transportation of goods viz. limestone which can be figured out from the contract copy submitted along with appeal memorandum.

(iv) Hiring, leasing, licensing service refers to giving possession to the transferee. The possession may be without right to use or with right to use. If it is given with right to use then it is deemed as sales as per sub-clause (d) of clause (29 A) of Article 366 of the Constitution of India. To differentiate it from deemed sale it is included as declared service if such Hiring, leasing, licensing is without right to use. So for classifying any service as hiring, leasing or licensing there should be handover of possession of goods. However, in a contract for carriage of goods whether classified as GTA or transportation other than GTA, there is no such handing over of possession of goods (i.e. vehicle). Possession remains with the transport operator. Accordingly, on facts of the case, their service is transportation service only and in no case it can be classified under the clause 66E(f) which covers "transfer of goods by way of hiring, leasing,

*dy*



licensing or in any such manner without transfer of right to use such goods".

(v) The Show Cause Notice is time barred. As per the provision of Section 73, it is clear that the time limit of five (5) years for issue of Show Cause Notice is applicable only if there is non payment or short payment etc. on account of (a) fraud; or (b) collusion; or (c) wilful misstatement; or (d) suppression of facts; or (e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax. In the present case, there was no applicability of service tax considering the nature of transactions and hence it cannot be said to be any contravention with an intention to evade tax and hence the time period of issuance of Show cause notice of five years is not applicable and hence, the Show cause notice is time barred.

5. Personal Hearing in the matter was conducted in virtual mode through video conferencing on 20.5.2022. Shri Divyesh Sodha, Chartered Accountant, appeared on behalf of the Respondent. He reiterated the submission made in cross objection to appeal. He further stated that the demand is time barred.

6. I have carefully gone through the facts of the case, the impugned order, appeal memorandum, Cross Objection filed by the Respondent as well as oral submission made at the time of hearing. The issue to be decided in the present appeal is whether the Respondent is liable to pay service tax amount of Rs. 52,54,534/- on the income earned for providing transportation service or not.

7. On perusal of the records, I find that the Respondent had provided transportation service to M/s Ultratech Cement Ltd and M/s Digvijay Cement Co. Ltd in the F.Y. 2014. The adjudicating authority held that since the Respondent had not issued consignment notes, the activity undertaken by them for transportation of goods by road was covered under Negative List of services in terms of Section 66D(p)(i) of the Act. Hence, the Respondent was not liable to pay service tax on the income received for providing transportation service.



7.1 The Appellant Department has contended that issue of consignment note has been stipulated as a mandatory ingredient to qualify the Respondent's activity under GTA. The Respondent has not produced any evidence that they had issued "consignment note" as per Section 65B (26) of the Act. Merely on the basis of invoices, it cannot be concluded that the activity of the Respondent can be merited to be qualified under GTA. The Appellant Department further contended that the Adjudicating Authority failed to appreciate the legal provision that if the Respondent is not covered under the purview of the GTA services then the question of the service tax liability to be discharged under reverse charge mechanism doesn't arise.

7.2 The Respondent has contended that even if the nature of service of transportation cannot be considered as GTA then also services by way of transportation of goods by road were taxable, only if the same was provided by (i) a goods transport agency or (ii) courier agency. Services of Road Transport provided by all others were not taxable as the same were covered by the Negative List under Section 66D(p)(i) of the Act.

8. I find it is pertinent to examine the provisions contained in Section 66D(p)(i) of the Act relied upon by the adjudicating authority, which are reproduced as under:

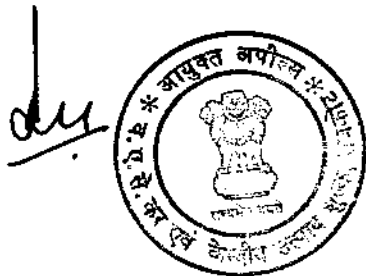
"SECTION 66D. Negative list of services. — The negative list shall comprise of the following services, namely:—

...

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

..."

8.1. In backdrop of the above legal provisions and on examining the fact of the case, it is observed that the Respondent had provided transportation service to M/s Ultratech Cement Ltd and M/s Digvijay Cement Co. Ltd in the F.Y. 2014-15, which is not under dispute. Even if the contention of the Appellant Department, that the Respondent was not GTA, is considered then also transportation service provided by the Respondent would be covered under negative list of services in terms of Section 66D(p)(i) *supra* and no service tax was payable by the Respondent, as rightly held by the adjudicating authority. I, therefore, discard





this contention as devoid of merit.

9. The Appellant Department has contended that the Respondent had transferred the goods (trucks) by way of hiring without transfer of right to use such goods and such activity was declared service within the meaning of clause (f) of the Section 66E of the Act and services provided by the Respondent was liable to service tax. On the other hand, the Respondent has contended that the term "hiring, leasing, licensing or in any such manner" contained in Section 66E(f) of the Act refers to giving possession to the transferee. The possession may be without right to use or with right to use. If it is given with right to use then it is deemed sale as per sub-clause (d) of clause (29 A) of Article 366 of the Constitution of India. If such hiring, leasing, licensing is without right to use, then it is declared service. So for classifying any service of hiring, leasing or licensing as declared service, there should be handover of possession of goods. However, in a contract for carriage of goods whether classified as GTA or transportation other than GTA, there is no such handing over of possession of goods i.e. vehicle. Possession remains with the transport operator. Hence, transportation service provided by them cannot be classified under Section 66E(f) of the Act.

9.1 The provisions contained in Section 66E(f) are reproduced as under:

"SECTION 66E. Declared services. — The following shall constitute declared services, namely:—

.....  
(f) transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods."

9.2. I have gone through contract dated 22.11.2012 entered with M/s Ultratech Cement Ltd and copies of invoices submitted by the Respondent. As per said Contract, the Respondent was required to arrange for trucks and carry out transportation of limestone from Miyani to Kovaya and transportation charges were fixed on per MT basis. I have also gone through sample copies of invoices raised by the Respondent to M/s Ultratech Cement Ltd, wherein the Respondent has raised charges @ 634 per MT for transportation of limestone. Thus, it is apparent that the Respondent had not transferred trucks on hire basis to their client but used the truck for transportation of limestone and invoices were raised charging on per MT basis. So, essence of contract and scope of service rendered by the Respondent was to carry out transportation of limestone



and there is no whisper of providing trucks on hire basis to their clients. Further, the Appellant Department has not demonstrated as to how the transactions between the Respondent and their clients were covered under clause (f) of Section 66E of the Act. After careful examination of facts of the case, I am of the opinion that the transportation service rendered by the Respondent will not be covered as declared service under Section 66E(f) of the Act and the Respondent cannot be held liable to discharge service tax on the said transactions. I, therefore, discard the contention of the Appellant Department as being devoid of merit.


10. The Respondent has further contended that Show Cause Notice issued in the matter invoking extended period of limitation is time barred. It is contended that there was no applicability of service tax considering the nature of transactions and hence it cannot be said to be any contravention with an intention to evade tax and the time period of issuance of Show cause notice of five years is not applicable. Hence, the Show cause notice is time barred.

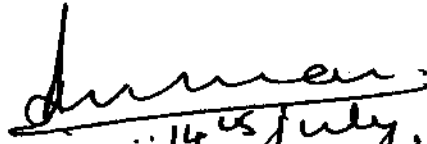
10.1 It is observed that demand in the present case pertains to F.Y. 2014-15 and last date for issuance of Show Cause Notice by invoking extended period of limitation under proviso to Section 73(1) of the Act was 25.4.2020. However, the Show Cause Notice was issued to the Respondent on 22.9.2020, which is beyond limitation of five years prescribed under proviso to Section 73(1) of the Act. Thus, Show Cause Notice is not sustainable on limitation as well.

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

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

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

सत्याप्त,  
  
 विष्णु शर्मा  
 अधीक्षक (अपील)

  
 14 July, 2021  
 (AKHILESH KUMAR)  
 Commissioner (Appeals)



By RPAD

To,  M/s Trans Logix, Plot No. 22, Near Umi Minerals, GIDC Dharampur, Porbandar.	सेवा में,  मैसर्स ट्रांस लॉजिक्स, प्लॉट नंबर 22, उमी मिनेरल्स के पास, जीआईडीसी धर्मपुर, पोरबंदर।
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प्रतिलिपि :-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 3) संयुक्त आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फ़ाइल।

