



::आयुक्त (अपील्स) 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

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DIN20221164SX000051085B



सत्यमेव जयते

क अपील / फाइल संख्या /
Appeal / File No.
V2/22/BVR/2022

मूल आदेश सं /
O.I.O. No.
BHV-EXCUS-000-JC-PK-002-
2021-22

दिनांक / Date
14-02-2022

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

BHV-EXCUS-000-APP-094-2022

आदेश का दिनांक /

Date of Order:

11.11.2022

जारी करने की तारीख /

Date of issue: 29.11.2022

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 सेवाकर, राजकोट / जामनगर / गांधीधामा 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. Sureshbhai Jilubhai Vala (Prop. Raviraj Enterprise), Hindrona Chowkdi, Jafrabad Road, Rajula - 365560 Dist.- Amreli

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) बर्गीकरण भूल्यांकन से सम्बन्धित सभी मामलों में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को की जानी चाहिए /
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों में 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 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 रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेबॉकित 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। स्वयंन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना /
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 duty/demand/interest/penalty/refund is upto 5 Lac. 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/-

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The appeal 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. 1,000/- 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 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 नियमनाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आवृत्त, केन्द्रीय उत्पाद शुल्क अथवा आवृत्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रामाणित होनी चाहिए) और आवृत्त द्वारा सहायक आवृत्त 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 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 अपील 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 जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपीलित 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) सेनबेट जमा की नी गई गलत राशि
(iii) सेनबेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के अंश से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थान जहाँ एवं अपील की मांग नहीं होगी।
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 कोपनीय आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणयापिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपत्रक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, 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 विनियाम में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (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) मुनिषित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो छूटी केडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मूल्य की गई है और ऐसे आदेश जो आवृत्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयावधि 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 संशेषण 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।
यहाँ 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 दम से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पत्र कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केडीट 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 Appellate 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 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 बर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान आकषित 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.



:: अपील आदेश / ORDER-IN-APPEAL ::

M/s. Sureshbhai Jilubhai Vala, Sadbhav Society, At Rajula, Dist.: Amreli (hereinafter referred to as "Appellant") has filed Appeal No. V2/22/BVR/2022 against Order-in-Original No. BHV-EXCUS-000-JC-PK-002-2021-22 dated 14.02.2022 (hereinafter referred to as 'impugned order') passed by the Joint Commissioner, Central GST, Bhavnagar (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that the Income Tax Department had shared data/ details filed by various persons i.e. Income Tax Assessee, who in their Income Tax Returns for financial year 2014-15, 2015-16 & 2016-17 declared to have earned income by providing services under various sectors. It was found that the Appellant had not obtained Service Tax Registration under the Finance Act, 1994 (hereinafter referred to as 'the Act'). The jurisdictional Superintendent, issued letter dated 30.07.2020 to the Appellant calling for the information/ documents viz. Copies of I. T. Returns, Form 26AS, Balance Sheet (incl. P & L account), VAT/Sales Tax returns, Annual Bank Statement, Contracts/ Agreements entered with the persons to whom services provided etc. during the Financial Year 2014-15, 2015-16 & 2017-18. No reply/ response was received from the Appellant to the letter dated 30.07.2020 till issuance of Show Cause Notice and hence the Service Tax was decided on the basis of data/details provided by the Income Tax department available on records.

3. The Show Cause Notice dated 03.09.2020 proposing to demand Service Tax of Rs. 73,64,262/- including all cess under Section 73(1) of the erstwhile Finance Act, 1994 (hereinafter referred to as 'the Act'), invoking extended period, interest under Section 75 and penalty under Section 77(1)(a), 77(2), 77(2)(c) and Section 78 of the Act was adjudicated vide the impugned order which confirmed Service Tax demand of Rs. 73,64,262/- with interest and imposed penalties of Rs. 10,000/- each under Section 77(1)(a), 77(2) and Section 77(2)(c) of the Act. The penalty of Rs. 73,64,262/- was also imposed upon the Appellant under Section 78 of the Act.

4. Being aggrieved, the Appellant has preferred the present appeal on 18.04.2022 mainly on various grounds as stated below:

(i) The Department failed to determine nature of service provided by the Appellant though all document viz. 26AS, Income Tax Returns and Audited Balance sheets were available as received from the Income Tax Department. The nature of business of the Appellant is "Transportation of goods and etc." As audit balance sheet column No. 10(a) of Form 3CD. The income under head "Transportation income" has been shown in the profit and loss account in 2014-



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15, 2015-16 and 2016-17 and expenses viz. diesel, insurance, driver salary, transportation freight expenses, tyre expenses etc. are shown. These documents show that the Appellant provided services of supply of trucks on rent for transportation of goods by road. The Appellant provided services of "Transportation of goods by road" but the adjudicating authority classified the services under the category "GTA" as well as "transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods" under Section 66E(f) inspite of the fact that after 01.07.2012 there was no classification of service at all except negative list, declared service, abatement notification or reverse charge notification. Thus, the impugned order classifying the service is erroneous.

(ii) The adjudicating authority after admitting facts that the Appellant was engaged in providing service of "Transport of goods by Road", has rejected the facts on the ground that copy of bill and copy of agreement to whom goods were transported are not furnished to find out the correct nature of service after taking note of provisions of Section 66D(p) of the Act. In daily routine business practice, no agreement is entered into for such activity and hence the Appellant had not entered into contract with anyone.

(iv) The services provided by the Appellant was "Transportation of goods by Road" on which no Service tax under Section 66B of the Act as the same was specified under Section 66D(p) of the Act. The adjudicating authority found that services provided under "Goods Transport Agency" should satisfy two conditions viz. (i) a person should provide service in relation to transport of goods by road and (ii) he should have issued consignment note, which is mandatory conditions. In the present case since the Appellant had not submitted the evidence of consignment notes and hence the case of Appellant does not fall under "GTA". Infact, the Appellant provided services of transportation of goods by road and covered by negative list under Section 66D(p) and hence question of issuance of consignment note does not arise. In absence of consignment notes, the adjudicating authority found that the Appellant transferred the goods (Trucks) by way of hiring without transfer of right to uses such goods as provided under Section 66E(f).

(v) If it is presumed that services of transportation of goods were provided to the recipient in the supply of trucks on hire to GTA then also said service was exempted from payment of service tax as per Sr. No. 22 of Notification No. 25/2012-ST dated 20.06.2012 as amended. Therefore, the services provided by the Appellant either by way of supply of trailer for transportation of goods by road as "Transport of goods by road" or supply of "Trucks on rent" to GTA as the case may be, is not liable to service tax.



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(vi) The demand for the period 2014-15, 2015-16 and 2016-17 is time barred as there is no suppression of facts etc. as the income figures taken in the impugned notice are already recorded in the books of accounts and declared before the Income Tax authority. The failure to take registration or pay tax if any does not amount to suppression and is required to be established by the department for invoking extended period. As per Section 73(1) of the Act, the show cause notice is required to be served within 30 months from the relevant date i.e. from the due date of filing ST-3 returns. In the instant case, the show cause notice was required to be issued before 25.10.2019 whereas the same has been issued on 03.09.2020 which is time barred. They rely on the decisions of (a) Padmini Products Vs. Collector of C.Ex. 1989 (43) ELT 195 (S.C.). (b) Collector of Central Excise Vs. Chemphar Drugs & Liniments - 1989 (40) ELT 276 (S.C.) (c) CBEC New Delhi Circular No. 1053/2/2017-CX. Dated 10.03.2017 clarifying limitation and extended period (d) Collector of C.Ex. Vadodara Vs Dhiren Chemical Ind. - 2002 (139) ELT 3 (S.C.) (e) CBIC Instruction F. No. 201/01/2014-CX.6 dated 26.06.2014 wherein direction has been issued to follow judicial discipline in adjudication. The Appellant is not liable to pay any service tax during the period under reference.

5. Personal hearing in the matter was held on 18.10.2022 which was attended by Shri Pankaj D. Rachchh, Advocate, CA Drashti Sejpal & CA Komal Raja wherein they reiterated the submissions made in the grounds of appeal in this case. They submitted that they were providing services for transport of goods by road to the exporters without any consignment note and supplying trucks to various GTA's on rent. In both the cases they were not providing any GTA service and both the services were either exempted by Notification or under negative list and they were not liable to pay any Service Tax. Even if it is assumed, without admitting, that the service provided by them fall under the category of GTA, the liability to pay Service Tax was on the receiver of services on RCM and not on them. Therefore, they were not liable to pay any Service Tax on the services provided by them. They requested to set aside the impugned order of the lower Adjudicating Authority and drop the demand, the interest and the entire penalty levied on them.

6. I have carefully gone through the facts of the case, impugned order and appeal memorandum filed by the Appellant. The issue to be decided in the case on hand is that whether the Appellant is liable to pay service tax on activity carried out by them or not.

7. I find that the Adjudicating Authority found that the adjudicating authority observing that the activity of the Appellant is covered under Section 65B(44) of the Act as well as under clause (f) of Section 66(E) of the Act, held



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that the Appellant was liable to pay service tax on transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods. I find that the subject issue was clarified by the Board vide Circular No. 198/08/2016-Service Tax dated 17.08.2016. Relevant directions in Para 5 of which are re-produced below:

"5. In all these cases, no a priori generalisations or assumptions about service tax liability should be made and the terms of the contract should be examined carefully, against the backdrop of the criteria laid down by the Supreme Court in the Bharat Sanchar Nigam Limited case as well as other judicial pronouncements."

7.1 I find that lower Adjudicating Authority has not discussed or elaborated reasoning for arriving at the conclusion that the activity carried out by the Appellant falls under the scope of Section 66E(f) of the Act, as directed in the circular. On perusal of the impugned order, I find that the lower Adjudicating Authority has not tested the ingredients narrated by the Board in above mentioned Circular to prove the taxability of the services carried out by the Appellant. The para 4.1 of the above-mentioned Circular also speaks about the type of lease and it should be recognized in the books of account, and the lessee bears the cost of repairs and maintenance and risk of obsolescence also rests with him.

7.2 On the contrary, on perusal of the records, I find that as per the Tax Audit Report Part-B of form No. 3CD submitted by the Appellant, their nature of business or profession is Transportation of goods etc. It is also mentioned in the books of account that the Appellant has borne the expenses viz. diesel expenses, driver's salary expenses, road tax & maintenance expenses, truck insurance expenses, truck repairing expenses, tyre purchase expenses etc. Further, I find from the documents submitted by the appellant that during the relevant period, the Appellant had never made any agreement/ contract with the recipient of the services to use the goods without transfer of its right. Instead, they had supplied the said trucks for transportation of goods to their customers in which the position and control always lies with the Appellant and they had never supplied their trucks on hiring/ leasing/ licensing to their customers. Further, on verification of ledgers and copies of Bills submitted by the Appellant, it appears that they charged the freight per trip from their customers.

7.3 In view of the above, it is clear that the Appellant is engaged in transport of goods by road and had provided the services to various companies and hence, the conclusion drawn by the Adjudicating Authority that the services provided by the Appellant is transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods under clause (f) of Section 66(E) of the Act i.e. declared services is devoid of any basis.



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8. It is the contention of the Appellant that their services are covered under negative list as defined under clause 66D (p) (i). The same is re-produced below

for sake of reference:

"66D (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;"

Now coming to the taxability under Goods Transport Agency services, the same is defined under clause 26 of Section 65B of the Act as under:

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

The Appellant has submitted copies of Bills wherein details viz. name of the consignee, vehicle number, destination, freight amount etc. has been mentioned which can be construed as consignment notes. Further on the body of many of the said bills it has been mentioned that "Service Tax payable by consignee". Hence, the services provided by them is nothing but Goods Transport Agency services. On verification of the copies of Bills as well as Books of Accounts of the Appellant, it is not forthcoming that they have provided their trucks to Goods Transport Agency for transportation of the goods. On the contrary, the Appellant provided their trucks to their customers for transportation of the goods and charged the rate per trip as per the distance to be covered under individual trip. On verification of documents viz. books of accounts, profit & loss accounts and copies of bills issued by the Appellant, it is amply clear that the services provided by them is transport of goods as a Goods Transportation Agency and they have issued consignment notes, in the name of Bills. Hence, the Appellant is not covered under the negative list as defined under Section 66D(p) and is liable to pay service tax on transport of goods by road as a Goods Transport Agency.

9. The Appellant has contended that even if it is presumed that services of transportation of goods were provided to the recipient by supply of trucks on hire to GTA, then also said service was exempted from payment of service tax as per Sr. No. 22 of Notification No. 25/2012-Service Tax dated 20.06.2012 as amended. However, I find that the services provided by the Appellant are not covered under Sr. No. 22 of mega exemption Notification No. 25/2012-Service Tax dated 20.06.2012. The relevant excerpt is as under:

"22. Services by way of giving on hire -

(a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or



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(b) to a goods transport agency, a means of transportation of goods;

On going through the copies of Bills submitted by the Appellant, it is observed that they have not given their trucks on hire basis to a goods transport agency as they have issued Bills date-wise for different parties/companies on as and when required basis with endorsement that "service tax is payable by consignee". Further, the Appellant has not submitted any contract for providing their trucks on hire basis to the goods transport agency. The Bills submitted by the Appellant are date wise for different destinations and the freight is mentioned for each and every trip of the trucks. If the Appellant has given their trucks on hire basis then the bills would have been issued periodically for a specific amount of rent irrespective of trips made by the goods transport agency. Further, had it been a case of giving trucks to GTA on hire/rent, there was no requirement for endorsement to the effect that "Service Tax is payable by consignee". Such an endorsement amounts to an act of admission that the Appellant was aware that service rendered was liable to Service Tax. Therefore, the case is not falling under above-mentioned criteria and hence Appellant is not eligible for exemption under Notification No. 25/2012.

10. Therefore, the service provided by the Appellant is nothing but as a "Goods Transport Agency", which is liable to service tax. The same is neither covered under negative list nor covered under the mega exemption Notification No. 25/2012-Service Tax dated 20.06.2012. Now let me examine the contentions of the Appellant that even if it is assumed, without admitting, that the service provided by them fall under the category of GTA, the liability to pay Service Tax was on the receiver of services on reverse charge mechanism and not on them. Here, I find that the services of transport of goods by road as Goods Transport Agency is covered under Notification No. 30/2012-Service Tax dated 20.06.2012 subject to certain conditions. The relevant portion is re-produced below for ready reference:

"1. The taxable services,—

(A) (i)

(ii) provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—

(a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;

(c) any co-operative society established by or under any law;

(d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;

(e) any body corporate established, by or under any law; or



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(f) any partnership firm whether registered or not under any law including association of persons;

“(II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely:-

TABLE

Sl. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
1
2	in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road	NIL	100%

On verification of Form 26AS, ledgers and profit & loss accounts, it transpires that the services were provided by the Appellant to various customers such as Skyline Engineering, Divine Shipping Services etc. There is a possibility that some or majority of these customers may be proprietary firms, a category not covered under the above Notification. To claim exemption from payment of service tax, the Appellant has to fulfil the conditions as mentioned in the Notification. Here, the condition is that the goods transport agency should provide the services to category of persons mentioned at (a) to (f) of the Notification No. 30/2012-Service Tax dated 20.06.2012. It is a settled law that conditions of an exemption Notification are to be satisfied strictly and the burden of proof is heavily on the claimant. Therefore, in absence of any documentary evidences, the benefit of exemption cannot be extended to the Appellant on the basis of presumption and the Appellant is liable to pay service tax.

11. The next contention of the Appellant is that the demand is time barred as there was no suppression of facts and figures taken in the impugned notice are already recorded in the books of accounts and declared before the Income Tax authority. On this, I find that the period covered under the Show Cause Notice is from 2014-15 to 2016-17 and the Show Cause Notice was issued on 03.09.2020. In this regard, I find that as per proviso to Section 73(1) of Finance Act, 1994, where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of -

- (a) Fraud; or
- (b) Collusion; or
- (c) Wilful mis-statement; or
- (d) Suppression of facts; or



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(e) *Contravention of any of the provisions of this Chapter or the rules made thereunder with intent to evade payment of service tax,*

show cause notice is required to be served within five years from the relevant date. As per Section 73(6) of Finance Act, 1994 'relevant date' means-

"(i) *in the case of taxable service in respect of which service tax has not been levied or paid or has been short-levied or short-paid –*

(a) *where under the rules made under this Chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed;*

(b) *where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;*

(c) *in any other case, the date on which the service tax is to be paid under this Chapter or the rules made thereunder;*

(ii) *in a case where the service tax is provisionally assessed under this Chapter or the rules made thereunder, the date of adjustment of the service tax after the final assessment thereof;*

(iii) *in a case where any sum, relating to service tax, has erroneously been refunded, the date of such refund.]"*

In the present case, the appellant has not filed any return and hence the relevant date is the last date on which such return was required to be filed. For the period from April 2014 to September 2014 the ST-3 return for the said period was required to be filed by 25th of October 2014. As such, the show cause notice was required to be served latest by 24th of October 2019, but in the present case notice was served on 03.09.2020 and hence the demand for the period from April 2014 to September 2014 is clearly hit by limitation of time under Section 73 *ibid*.

12. As regarding the contention of the appellant that demand for the period remaining period of 2014-2015 to 2016-17 is also time barred as there is no suppression of facts etc., I find that from the endorsement on the Bills to the effect that Service Tax payable by consignee, it is evident that the Appellant was aware of the taxability and the contravention of law on their part have been committed with the deliberate intent to evade payment of service tax by way of not obtaining the service tax registration etc. On plain perusal of the Bills issued by the Appellant, it is evident that they are having basic knowledge of Service Tax. Undoubtedly, the Appellant has abused the facility of self-assessment provided under Section 70, which directs that every person liable to pay the Service Tax shall himself assess the tax due on the services provided by him and shall furnish the periodical returns as prescribed. Thus, the afore mentioned statutory provisions of service tax cast an obligation upon the Appellant to get registration, to pay service tax, and to file proper periodical returns. All these facts narrated above go to show that the Appellant did not discharge the obligations cast upon them under the statutory provisions. If the Appellant was not sure about the taxability of his services, he could have asked the Service Tax authority for guidance. It is obvious that the Appellant has not obtained Service



A.M.

Tax registration with an ulterior motive to evade payment of Service Tax. Not only they have not filed any ST-2 returns during the period under question, they also neither replied nor submitted any documents in response to the letter dated 30.07.2020 of the Range Superintendent. Such acts amount to suppression on part of the Appellant. Unless a return is filed under Service Tax, the figures recorded in their books of accounts and declared before the Income Tax authority are not accessible to the Service Tax authority. Income Tax department and Central Excise & Service Tax department are both separate and independent entity and the adjudicating authority cannot access data of Income Tax Department unless the Income Tax Department provides the data to the Central Excise & Service Tax department on case-to-case basis. Had inquiry not been conducted by the department, the violation and contravention of law by the appellant would not have come to the notice of the department. Hence, the extended period of limitation has been correctly invoked. Further, as per THE TAXATION AND OTHER LAWS (RELAXATION AND AMENDMENT OF CERTAIN PROVISIONS) ACT, 2020, where any time-limit has been specified in, or prescribed or notified under, the specified Act which falls during the period from the 20th day of March, 2020 to the 31st day of December, 2020, the time-limit stands extended to the 31st day of March, 2021. The Show Cause Notice in the instant case was issued on 03.09.2020 and hence, I of the considered view that the demand for the period from October-2014 to 2016-17 is well within the extended period prescribed under Section 73(1) covering the period of 5 years.

13. Thus, I hold that the demand from October-2014 to 2016-17 has been made within the extended time limit and is rightly confirmed alongwith interest. I also hold that the adjudicating authority has rightly imposed liability to penalty under Section 78, 77(2), and 77(1)(c) of the Act. In view of the modification for the period April-2014 to September-2014 at para 11 supra, I direct the Adjudicating Authority to re-calculate the Service Tax amount within 30 days from the date of receipt of this order and communicate the same to the Appellant. The penalty under Section 78 of the Act will be equal to the Service Tax so re-calculated by the Adjudicating Authority. However, I extend the benefit of reduced penalty as envisaged under second proviso to Section 78 of the Act, subject to adherence to the conditions enumerated therein and payment within the period stipulated therein.

14. In view of the above, I uphold the impugned order to the extent of demand of service tax and interest for the period from October 2014 to 2016-17 alongwith penalty under Section 77(1)(c), 77(2) and 78 of the Act and I set aside the demand of service tax for the period from April 2014 to September 2014 as time barred and partially allow the appeal filed by the Appellant to this extent.



Signature

only.

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

15. The appeal filed by Appellant is disposed off as above.

सत्यापित / Attested



Superintendent
Central GST (Appeals)
Rajkot

By R.P.A.D.



(शिव प्रताप सिंह) (Shiv Pratap Singh)
आयुक्त (अपील) / Commissioner (Appeals)

To, M/s. Sureshbhai Jilubhai Vala, Sadbhav Society, At Rajula, Dist.: Amreli	सेवा में, मे. सुरेशभाई जीलुभाई वाला, सदभाव सोसायटी, राजुला, जिल्ला: अमरेली।
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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) अपर/संयुक्त आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर को आवश्यक कार्यवाही हेतु।
- 4) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर-1 मण्डल को आवश्यक कार्यवाही हेतु।
- 5) गार्ड फाइल।

