

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



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

रेस कोर्स रिंग रोड / Race Course Ring Road

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रजिस्टर्ड डाक ए.डी. द्वारा

DIN-20221264SX0006777BA6

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/21/BVR/2022	BHV-EXCUS-000-JC-PK- 009-2021-22	02-12-2022

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

BHV-EXCUS-000-APP-105-2022

आदेश-का दिनांक / Date of Order:	30.11.2022	जारी करने की तारीख / Date of issue:	02.12.2022
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श्री शिव प्रताप सिंह, आयुक्त (अपील), 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 / 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 / Jamnager / Gandhidham:

घ अपीलकर्ता/प्रतिवादी का नाम एवं पता /Name & Address of the Appellant & Respondent :-

M/s. Resikbhai Dahiyabhai Chauhan, The Kutch Salt & Allied Industries Ltd., Plot No. 18, Main Bhevan, Kutch-370201 Sector-08, Gandhidham Kutch-370201

इस आदेश (अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है: /
 Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है: /

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to: -

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामलों 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 सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टम) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाला 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, जहाँ उत्पाद शुल्क की माँग, ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो 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 जहाँ संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्पष्ट 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 shall be accompanied by a fee of Rs. 1,000/-, Rs.5000/-, Rs.10,000/- where amount of duty/demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के अंतर्गत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहाँ सेवाकर की माँग, ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो 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 जहाँ संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्पष्ट 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 fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is upto five lakhs but not exceeding Rs. Fifty Lakhs, 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/-.



वित्त अधिनियम, 1994 की धारा 88 की उप-धारा (2A) के अंतर्गत की गयी अपील, सेवाकर नियमावली, 1994, के नियम 9 एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में को जमा करनी एवं उक्त प्रपत्र, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियां संलग्न कर, जिनमें से एक प्रति प्रेषित होनी चाहिए और आयुक्त द्वारा सहायक आयुक्त अथवा उप-आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपील विभागीय अधिकरण को आवेदन दान 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 of 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.

सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील विभागीय अधिकरण (सिस्टम) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 88 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपील विभागीय अधिकरण में अपील करते समय उत्पाद शुल्क के मांग के 10% प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, अंतर्गत सेवाकर 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) सेनवेट जमा की ली गई गलत राशि
- (iii) सेनवेट जमा नियमावली के नियम 8 के अंतर्गत देय रकम

बशर्त यह कि इस धारा के प्रावधान विहित (सं 2) अधिनियम 2314 के अर्थ से पूर्व किसी अपील विभागीय अधिकारी के समक्ष विचारार्थीन स्थान अर्थात् अपील को लागू नहीं होगा।

For an appeal to be filed before the CBETA under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 88 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 Central Credit taken;
- (iii) amount payable under Rule 6 of the Central Credit Rules

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

भारत सरकार 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 अथवा सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त सेवाएं, मुख्य 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:

यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के परामर्श के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह परामर्श 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

भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विभागीय अधिकरण में प्रदत्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के कूट (निबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गई 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.

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.

संशुद्ध उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो कूट प्रोड्यूसर 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 108 के द्वारा निर्यात की गई तरीख 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.

उपरोक्त आवेदन को 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 संशुद्धन 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-एए के तहत निर्धारित शुल्क की अदायगी के साध्य 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:

पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहां संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000/- का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान उपर्युक्त ढंग से किया जाना चाहिए। इस तथ्य के हत हुए भी का लिखा पदों काय से बचने के लिए यथासंभव अपील विभागीय अधिकरण 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 Appellate Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if existing Rs. 1 lakh fee of Rs. 100/- for each.

यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थान 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-1 in terms of the Court Fee Act, 1975, as amended.

सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील विभागीय अधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्बन्धित 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.

अपील विभागीय अधिकारी 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. Rasikbhai Dahiyabhai Chauhan (hereinafter referred to as "Appellant") has filed the present Appeal against Order-in-Original No. BHV-EXCUS-000-JC-PK-009-2021-22 dated 15.02.2022 (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 shared the third party information/ data based on Income Tax Returns/ 26AS for the Financial year 2014-15 of the Appellant. A letter dated 22.07.2020 was issued by the Jurisdictional Range Superintendent requesting the Appellant to provide information/documents for the Financial year 2014-15. However, no reply was received from the Appellant and hence, the Service Tax was determined on the basis of data/ details provided by the Income Tax department.

3. The above investigation culminated into Show Cause Notice No. V/15-20/DEM/HQ/2020-21 dated 27.08.2020 proposing to demand Service Tax of Rs. 1,32,41,066/- including all cesses under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as 'the Act') by invoking extended period alongwith interest under Section 75 of the Act from the Appellant. It was also proposed to impose penalty under Section 77(1)(a), 77(2), 77 (1)(c) and Section 78 of the Act.

4. The adjudicating authority vide the impugned order confirmed Service Tax demand of Rs. 1,32,41,066/- under Section 73(1) invoking extended period of 5 years along with interest under Section 75 of the Act. The adjudicating authority imposed penalties of Rs. 10,000/- each under Section 77(1)(a), 77(2) and Section 77 (1)(c) of the Act. The penalty of Rs. 1,32,41,066/- was also imposed upon the Appellant under Section 78 of the Act.

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

(i) The adjudicating authority imposing tax on the said supply is bad in law and against the principles of natural justice. The figures of "Sales/ Receipt from Service" of Rs. 10,71,28,364/- on which the entire demand has been raised is unsupported by any figures in the ITR filed by the Appellant or the Form 26AS of the Appellant for the year 2014-15. The adjudicating authority erred in determining that amounts have been paid/ credited to the Appellant under Section 194C, 194H, 194I & 194J of the Income Tax Act. The Form 26AS for the year 2014-15 has reported that the payments have been credited to the Appellant under Section 194C on account of income from transportation of salt



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and hence the claim of adjudicating authority that payments have been made to the Appellant under Section 194H, 194I & 194J is baseless.

(ii) The service of transportation of salt supplied by the Appellant is covered under the mega exemption Notification No. 25/2012 dated 20.06.2012 from the liability of service tax and hence they are neither required to obtain a service tax registration nor liable to pay the service tax.

(iii) For failure to furnish documents and information, they had already replied with a letter informing of his change of residence alongwith the request to transfer his file to Gandhidham. Their failure to respond to any intimation for personal hearing is due to missed communication due to change of residence.

(iv) They rely on final order dated 28.03.2022 passed by the proper officer at Gandhidham dropping the proceedings in SCN dated 22.12.2020 covering same grounds regarding exemption of service. The learned officer erred in imposing interest and penalties.

6. Personal hearing in the matter was held on 07.11.2022. CA Shri Rajiv K. Doshi & CA Shri Jaydeep Vasani appeared for personal hearing and handed over a paper book containing 214 pages of written submissions and supporting documents. They reiterated the submissions made therein and those in their appeal. They submitted that the Appellant is providing service of transport of salt, which is exempted from Service Tax under mega exemption Notification No. 25/2012-Service Tax and therefore, they are not required to take registration or file returns. They submitted further, that there is no suppression on their part as the details were declared in their books of accounts and I. T. returns. Even if extended period is invoked, the Show Cause Notice was issued after 5 years from the relevant date and is without authority of jurisdiction. In an identical matter Adjudicating Authority at Gandhidham had decided that there is no liability of Service Tax on them as they did not provide any taxable service. Based on above, they requested to set aside the Order-In-Original and allow consequential relief.

6.1 The Appellant in their written submission produced during the course of personal hearing stated that earlier they were engaged in business of salt transport contractor at Village: Chanch, Taluka: Rajula and subsequently they shifted business at Plot No. 18, Maitri Bhavan, Sector-08, Gandhidham. They have received the income under Section 194C only. They had responded to the Show Cause Notice vide their letter dated 23.02.2021 intimating the change of residence to Gandhidham Kutch. They also informed that the Assistant Commissioner of CGST, Gandhidham had already issued Show Cause Notice dated 22.12.2020 covering the same period as covered in the impugned Show Cause



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Notice issued by the Joint Commissioner, Bhavnagar. They also requested Joint Commissioner, Bhavnagar to transfer the file to Gandhidham so as to allow an ease of compliance and avoid the inconvenience caused by frequent travels back to Bhavnagar which was not taken into account by the Adjudicating Authority. In response to personal hearing notice dated 23.12.2021, they vide their letter dated 04.01.2022 requested more time for submission of details. The Adjudicating Authority without considering their request passed the order dated 15.02.2022 which is against natural justice. The CGST, Gandhidham vide order dated 28.03.2022 has dropped the proceedings initiated vide Show Cause Notice dated 22.12.2020 covering the same period. They rely on Prince Gutka Ltd. and Ors. Vs. CCE reported in 2005 (101) ECC 164, Simplex Infrastructure Ltd. Vs. Commissioner of Service Tax, Kolkata - 2016 (4) TMI 548- Calcutta High Court.

6.2 They are engaged in the business of transportation of salt and provide GTA services by way of giving trucks on hire in the specific category of the sale transportation. They had only income of salt transportation of Rs. 10,71,28,364/- during 2014-15 and no other services were provided by them as can be seen from audited financial statement, tax audit report and income tax return, sales register, sales invoices, ledger account of parties. The salt transportation is exempt from whole of Service Tax, leviable under Section 66B, as per mega exemption Notification No. 25/2012 dated 20.06.2012 at Entry No. 21(d). The Show Cause Notice was time barred as same was required to be issued on or before 25.04.2020 whereas the same had been issued on 27.08.2020 which is beyond extended period of 5 years. That they were providing exempted service and hence was not required to take registration and thus the entire demand is unsustainable. They are not liable to interest and penalty. They rely on CCE Vs. HMM Ltd.-1995 (76) ELT 497 (SCI), Coolade Beverages Ltd. Vs CCE Meerut-2004 (172) ELT 451 (All.)

7. I have carefully gone through the case records, Show Cause Notice, 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.

8. The Adjudicating Authority found that there are no specific instructions to transfer the Show Cause Notice to the other Commissionerate and not accepted the request made by the Appellant for transfer of Show Cause Notice to Gandhidham.

9. I find that the Show Cause Notice for the period 2014-15 was issued by the Adjudicating Authority vide Show Cause Notice dated 27.08.2020 as well as Assistant Commissioner, CGST Division, Gandhidham (Urban) vide Show Cause Notice dated 22.12.2020. However, the taxable value mentioned in the Show



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Cause Notice issued by the Adjudicating Authority was Rs. 10,71,28,364/- whereas that mentioned by the CGST Gandhidham was Rs. 10,02,285/- only.

10. I find that the Adjudicating Authority has found that in absence of any evidence, "Contractors-Others" services provided by the appellant which was not in negative list of services as defined under Section 66D of the Act, was taxable, fell under definition of 'taxable service' as provided under Section 65B (51) of the Act and Service Tax was leviable under Section 66B of the Act.

11. However, on going through the Tax Audit Report submitted by the Appellant, I find that the Contract Work Income of Rs. 10,71,28,364/- has been mentioned in Income & Expenditure account of Tax Audit Report for the year 2014-15. The column No. 10 (a) of Part-B of FORM No. 3CD of the Tax Audit Report shows the name of business or profession as "Transporters". The Adjudicating Authority at para 3.1 of the impugned order found that the demand was issued to the Appellant for the 'Sales/Gross Receipts from Service' amount shown by the Appellant in their Income Tax Return ITR-4. They also argued that they are engaged in the business of transportation of salt. On verification of bills issued by the Appellant, it is found that they have charged for salt transportation through tractor and trucks from their customers.

12. On going through the documents submitted by the Appellant, it is found that they were providing GTA services and they were transporting Salt by way of giving trucks and tractors on hire. Since the work of salt transportation was carried out by the Appellant the same is exempted from the Service Tax as per mega exemption Notification No. 25/2012-Service Tax dated- 20th June, 2012, as amended, incorporating changes made till issuance of notification no 10/2017-Service Tax dated 8-3-2017, as under:

"G.S.R. 467(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

21. Services provided by a goods transport agency by way of transport in a goods carriage of-
 (a) agricultural produce;
 (b) goods, where gross amount charged for the transportation of goods on a consignment transported in a single carriage does not exceed one thousand five hundred rupees; or



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(c) goods, where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed rupees seven hundred fifty;

(d) milk, salt and food grain including flours, pulses and rice;

(e) chemical fertilizer, organic manure and oilcakes;

(f) newspapers or magazines registered with the Registrar of Newspapers;

(g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or

(h) defence or military equipments;

(i) cotton, ginned or baled."

On plain reading of the provisions of above Notification, it is evident that the services provided by the Appellant were exempted from the Service Tax and accordingly, I order so.

13. In view of discussions and finding, I set aside the impugned order and allow the appeal filed by the Appellant.

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

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

सत्यापित / Attested

[Signature]

[Signature]
20/11/2022

Superintendent
Central GST (Appeals)
Rajkot

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

By R.P.A.D.

<p>To, M/s. Rasikbhai Dahiyabhai Chauhan, The Kutch Salt & Allied Industries Ltd., Plot No. 18, Maitri Bhavan, Sector - 08, Gandhidham, Kutch-370201.</p>	<p>सेवा में, मे. रसिकभाई डाहयाभाई चौहान, कच्छ साल्ट & अलाइड इंडस्ट्रीज़ लिमिटेड, प्लॉट संख्या: 18, मैत्री भवन, सेक्टर-08, गांधीधाम, कच्छ-370201.</p>
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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 फ़ाइल।

