



: : 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



सत्यमेव जयते

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DIN20221264SX000000A343

क अपील / फाइल संख्या /
Appeal / File No.
V2/49/BVR/2022

मूल आदेश सं /
O.I.O. No.
BHV-EXCUS-000-ADC-VM-014
TO 015-2021-22

दिनांक / Date
31-01-2022

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

BHV-EXCUS-000-APP-129-2022

आदेश का दिनांक /
Date of Order:
23.12.2022

जारी करने की तारीख /
Date of issue: 28.12.2022

श्री शिव प्रताप सिंह, आयुक्त (अपील्स), राजकोट द्वारा पारित /

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

ग अवर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, राजकोट / जामनगर / गांधीधाम) द्वारा
उपरलिखित जारी मूल आदेश से वृत्तित: /

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. Bipinkumar Giridharlal Parekh (Siddhnath Cargo Movers), Below Hotel Krishna, Nr. S.T.
Depot, Surendranagar, Gujrat-363031

इस आदेश (अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील वायर 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 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, बहामाली भवन असावा 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 निम्नलिखित 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, रूपए 5 लाख या उससे कम, 5 लाख रूपए या 50 लाख रूपए तक अथवा 50 लाख रूपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निश्चित जमा शुल्क की प्रति संलग्न करें। निश्चित 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 उक्त शाखा में होना चाहिए जहाँ संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वयंसेवक (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रूपए का निश्चित शुल्क जमा करना होगा। /

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/-, Rs.5000/-, Rs.10,000/- where amount of duty/demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

B)

अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निम्नलिखित 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, रूपए 5 लाख या उससे कम, 5 लाख रूपए या 50 लाख रूपए तक अथवा 50 लाख रूपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निश्चित जमा शुल्क की प्रति संलग्न करें। निश्चित 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 उक्त शाखा में होना चाहिए जहाँ संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वयंसेवक (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रूपए का निश्चित 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 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/-



- (i) विद्युत अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत बर्ज 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 आवेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निवेदन देने वाले आवेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टैट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एक के अंतर्गत, जो की विधीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर की भी लागू की गई है, इस आवेश 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, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित वेब राशि इस करों रूप से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" से निम्न शामिल है
(i) धारा 11 की अंतर्गत रकम
(ii) सेनबेट जमा की की गई समत राशि
(iii) सेनबेट जमा नियमावली के नियम 6 के अंतर्गत वेब रकम
- बशर्त यह कि इस धारा के प्रावधान विधीय (सं. 2) अधिनियम 2014 के अंश से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्वयं दर्ज एवं अपील को 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 कोपत्तरीसम आवेदन :
Revision application to Government of India:
इस आवेश को पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपूरुवक के अंतर्गतअवर 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 मास के किसी नुकसान के मामले में, जहां नुकसान किसी मान को किसी कारखाने से अंदर गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक अंदर गृह से दूसरे अंदर गृह पारगमन के दौरान, या किसी अंदर गृह में या अंदरगमन के मास के प्रदक्षरण के दौरान, किसी कारखाने या किसी अंदर गृह में मास 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 मास के विनिर्माण में प्रयुक्त कच्चे मास पर नयी 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 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 मास निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो अंती केरीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आवेश जो आयुक्त (अपील) के द्वारा विद्युत अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई शर्तों 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 उत्पाद शुल्क (अपील) नियमावली 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आवेश के संश्लेषण के 3 मास के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आवेश न अपील आवेश 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 साथ-साथ के वीर 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 was 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 आवेश में कई मूल आवेशों का समावेश है तो प्रत्येक मूल आवेश के लिए शुल्क का भुगतान, उपर्युक्त सं. से किया जाना चाहिए। इस तथ्य के होते हुए भी की विद्या फ्री कार्य से बचने के लिए सहायित्व 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 filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आवेश एवं स्वयं आवेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट बगो होना चाहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.
- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्बन्धित करने वाले विधियों की और भी ध्यान साकार 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 शामिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलीय विभागीय वेबसाइट www.cbcc.gov.in को वेब सक्ने 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.cbcc.gov.in.



:: अपील आवेद / ORDER-IN-APPEAL ::

~~M/s. Bininkumar Girdharlal Parekh Prop: Siddhant Cargo Movers,~~
SurenDRanagar, Gujarat-363031 (hereinafter referred to as "Appellant") has filed Appeal No. V2/49/BVR/2022 against Order-in-Original No. BHV-EXCUS-000-ADC-VM-014 to 15/2021-22 dated 31.01.2022 (hereinafter referred to as 'impugned order') passed by the Additional Commissioner, Central GST, Bhavnagar (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that the Income Tax Department provided data/ details containing various persons i.e. Income Tax Assessee, who in their Income Tax Returns for financial year 2015-16 & 2016-17, declared to have earned income by providing services classified under various service sectors. The Income Tax Department also provided data of Form 26AS showing details of total amount paid/ credited under Section 194C, 194H, 194I & 194J of the Income Tax Act, 1961 in respect of various persons which depicted that such persons had earned income by providing services like contract, commission or brokerage, renting of movable/ immovable property, Technical or Professional service etc. The said data also contained the details of the Appellant. The jurisdictional Range Superintendent issued letter dated 30.03.2019, summons dated 23.09.2020 for the period 2015-16 and letter dated 05.10.2021 for the period 2016-17, to the Appellant calling for the information/ documents. Since no reply/ response was given, Service Tax was determined on the basis of data/ details provided by the Income Tax department.

3. The Show Cause Notices No. (1) V/15-81/DEM/HQ/2020-21 dated 29.12.2020 and (2) V/15-38/DEM/HQ/2021-22 dated 20.10.2021 were issued to the Appellant proposing to demand Service Tax of Rs. 55,34,179/- & Rs. 62,59,193/-, respectively, under Section 73(1) of the erstwhile Finance Act, 1994 (hereinafter referred to as 'the Act') alongwith interest under Section 75 from the Appellant, by invoking extended period of 5 years. It was also proposed to impose penalties under Section 77(2), 77 (1)(c) and Section 78 of the Act.

4. The adjudicating authority vide the impugned order confirmed Service Tax demands of Rs. 15,26,569/- & Rs. 24,49,550/-, respectively, along with interest and penalties of Rs. 10,000/- each under Section 77(2) and Section 77 (1)(c) of the Act. The penalties of Rs. 15,26,569/- & Rs. 24,49,550/-, respectively, were also imposed under Section 78 of the Act with benefit of reduced penalty as per proviso to Section 78.

5. Being aggrieved, the Appellant preferred the present appeal on 17.05.2022 on various grounds as stated below:

(i) The adjudicating authority confirmed the demand without considering



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submission made by them and not considering the reconciliation and other documents and evidences produced by the appellant at the time of adjudication.

(ii) They have provided GTA services to private limited/ limited company, firm, AOP etc. which are subject to RCM but they have not deducted any TDS nor reported any figures in 26AS. The adjudicating authority also confirmed their services as GTA and also granted 70% abatement on RCM. However, the adjudicating authority confirmed the demand on assumptions that transactions not reported in 26AS but disclosed in Income Tax returns are taxable under the service tax.

(iii) The show cause notice is issued without any investigation and merely based on data received from Income Tax Department i.e. 26AS and ITR. They placed reliance on Amrish Rameshchandra Shah Vs. UOI & Others TS-77-HC-2021 Bom ST wherein Bombay High Court set aside the SCN based on information received from the Income Tax Department. They also rely on Sharma Fabricators & Erectors Pvt. Ltd. Reported at 2017 (5) GSTL 96 (Tri.-All.), Kush Constructions Vs. CGST NACIN 2019 (24) GSTL 606 (Tri.-All.), Alpa Management Consultants P. Ltd. Vs CST reported at 2007 (6) STR 181 (Tri.-Bang.), Tempest Advertising (P) Ltd. V. CCE- 2007 (5) STR 312 (Tri.-Bang.), Free Look Outdoor Advertising V CCE - 2007 (6) STR 153 (Tri.-Bang.), Kirloskar Oil Engines Ltd. V CCE - 2004 (178) ELT 998 (Tribunal) and Hindalco Industries V. CCE - 2003 (161) ELT 346 (T).

(iv) Confirming the charge of suppression and invoking the extended period despite the fact that there is not even an iota of evidence of suppression and entire demand is based on third party information.

6. CA Shri Punit Prajapati appeared for personal hearing and reiterated the submissions in their appeal. He submitted that the proceedings are *void ab-initio* since no Show Cause Notice can be issued merely on the basis of ITR data. They have submitted case laws in this regard, including a judgment by the Hon'ble Supreme Court. He submitted that as there is no suppression on their part, extended period has been wrongly invoked. On merits also, being GTA, they are eligible for benefit of rebate and RCM. They had submitted all the details to the lower authority with proof of discharge of liability by the recipients of the service. Had the same been considered, there would be no liability on their part. He requested for submission of a recent Tribunal order in his favour in a day or two. Based on these submissions he requested to set aside the Order-In-Original and quash the Show Cause Notice itself.

6.1 CA for the Appellant, vide email dated 08.11.2022 submitted a copy of the order by CESTAT, WZ Bench, Ahmedabad in case of M/s. Forward Resources Pvt. Ltd. Vs. CCE & ST Surat-I holding that the demand of Service Tax is not



sustainable on the basis of TDS/26AS statements.

7. I have carefully gone through the case records, Show Cause Notice, impugned order and appeal memorandum filed by the Appellant. I find that the impugned order was received by the Appellant on 01.02.2022 and they have filed appeal on 17.05.2022 which is beyond time limited prescribed under the Act. However, Hon'ble Supreme Court order dated 10.01.2022 in Miscellaneous Application No. 21 of 2022 has excluded the period from 15.03.2020 to 28.03.2022 and hence the delay in Appeal filed by the Appellant is hereby condoned.

8. I find that the Appellant is a registered Service Tax assessee under Transport of goods by road/goods transport agency service, filing Service Tax returns and has also submitted copies of S.T.-3 returns for the period 2015-16 & 2016-17. I find that Service Tax demanded in Show Cause Notices is based on difference between income shown in Income Tax Return and S.T.-3 returns. It is the contention of the Appellant that they are providing transport of goods by road service and issuing consignment notes and their service recipients are liable to pay Service Tax under Reverse Charge Mechanism under Notification No. 30/2012-Service Tax. The Appellant further contended that Service Tax demanded on differential taxable value is nothing but the value of services provided by them to their customers who are liable to pay Service Tax on reverse charge mechanism under Notification No. 30/2012-Service Tax.

9. The Appellant provided copies of ledgers of 16 body corporates and 4 individuals (alongwith declaration and copy of S.T.-3 returns) to whom they have provided the goods transport agency services during the year 2015-16 and the Service Tax is to be paid by these body corporates. As far as 4 individuals are concerned, they have submitted details viz. M/s. Rajendra & Sons is consignee of the Dhrangadha Chemical Works, M/s. Fine Chemicals is a partnership firm, M/s. Rajeev Industries is a factory registered under the Factories Act, 1948 and M/s. Laxmi Narsingh Agencies is an excise dealer. The total value of services provided to body corporate during 2015-16 comes to Rs. 11,67,72,413/-. Further, they have also provided goods transport agency service during the year 2015-16 to 4 individuals who are registered under Central Excise or are otherwise liable to pay Service Tax under reverse charge mechanism. The total value of services provided to individuals during 2015-16 comes to Rs. 1,04,50,100/-. Thus, total value of services during the year comes to Rs. 12,72,22,513/- which is the difference on which Service Tax has been demanded by the Department. Therefore, I find that the Appellant is not liable to pay Service Tax and the recipients of the service are liable to pay on reverse charge mechanism.

The Appellant has also provided copies of ledgers of 17 body corporates



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and 3 individuals (alongwith declaration) to whom they have provided the goods transport agency services during the year 2016-17 and the Service Tax is to be paid by these body corporates. As far as 3 individuals are concerned, they have submitted details viz. M/s. Rajendra & Sons is consignee distributor of the Dhrangadha Chemical Works, M/s. Rajeev Industries is a factory registered under the Factories Act, 1948 and M/s. Laxmi Narsingh Agencies is an excise dealer. The total value of services provided to body corporate during 2016-17 comes to Rs. 13,12,76,488/-. Further, they have also provided goods transport agency service during the year 2016-17 to 3 individuals who are registered under Central Excise or are otherwise liable to pay Service Tax under reverse charge mechanism. The total value of services provided to individuals during 2016-17 comes to Rs. 78,16,600/-. Thus, total value of services during the year comes to Rs. 13,90,93,088/- which is the difference on which Service Tax has been demanded by the Department. Therefore, I find that the Appellant is not liable to pay Service Tax and the recipients of the services are liable to pay on reverse charge mechanism.

11. I find that service tax demanded by Adjudicating Authority on services provided to SEZ. On verification of income ledger, these services were relating to goods transport agency provided by the Appellant to M/s. Hereto Labs Ltd., a unit in SEZ which is covered under reverse charge mechanism and hence the Appellant is not liable to pay Service Tax on income earned from M/s. Hereto Labs Ltd. and accordingly, I drop the same.

12. I find that service tax demanded by Adjudicating Authority on rent income earned from Oriental Bank of Commerce and Reliance Corporate Park Ltd. On verification of total turnover as per ITR, value of services provided to companies, association of person, firms and others like factories and excise dealers, the remaining value of Rs. 39,26,927/- and Rs. 39,60,800/- on which the Appellant has already paid the Service Tax on forward charge mechanism. Thus, demand on rent income, which has already been covered in value on which the Appellant has paid Service Tax on forwarded charge mechanism, is not tenable.

13. Further, Service Tax demanded by the Adjudicating Authority on income other than 26AS i.e. difference between turnover shown in Income Tax Return and value shown in Form 26AS plus value shown in S.T.-3 returns. The value shown in Form 26AS is far less than the value shown in Income Tax returns. Further, the value of services under reverse charge mechanism and value shown in S.T.-3 returns are tallying with the value of Income Tax Returns and hence demanding of service tax on difference between Income Tax Return income and income shown in Form 26AS is baseless.



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14. It is the contention of the Appellant that the demand is time barred. On this, I find that the period covered under the Show Cause Notice is from 2015-16 to 2016-17 and the Show Cause Notice was issued on 29.12.2020. 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
- (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.

14.1 As per Section 73(6) of Finance Act, 1994 'relevant date' means-

6) For the purposes of this section, "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 filed S.T.-3 return on 15.10.2015 and as such, the show cause notice was required to be served latest by 14th of October 2020, but in the present case notice was served on 29.12.2020. However, 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 stand extended to the 31st day of March, 2021. The Show Cause Notice in the instant case was issued on 29.12.2020 and hence, I am of the considered view that the demand for the period from 2015-16 to 2016-17 is well within the period prescribed under Section 73(1) covering the period of 5 years.



Amir

15. However, I am of the considered view that the Appellant being registered Service Tax assessee who is aware of provisions of Service Tax, was required to show the value of service under reverse charge mechanism in their statutory S.T.-3 returns. On verification of S.T.-3 returns submitted by them, it transpires that they have not shown the value of service under reverse charge mechanism on which recipients of the services are liable to pay Service Tax. Therefore, I find that the Appellant has suppressed these value from the Department, for the reason best known to them. Therefore, I find that they are liable for penalty under Section 77(2) and Section 77(1)(c) of the Act.

16. In view of above discussions and findings, the appeal filed by the Appellant is partially allowed.

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

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

सत्यापित / Attested



(शिव प्रताप सिंह)/(Shiv Pratap Singh),

आयुक्त (अपील)/Commissioner (Appeals)

Superintendent

Central GST (Appeals)

Rajkot

By R.P.A.D.

To, M/s. Bipinkumar Girdharlal Parekh, Prop.: Siddhnath Cargo Movers, Below Hotel Krishna, Nr. S. T. Depot, Surendranagar, Gujarat- 363031	सेवा में, मेसर्स बीपीनकुमार गिरधरलाल पारेख, सिद्धनाथ कार्गो मूवर्स, होटल क्रीष्णा के नीचे, एस. टी. डेपो के पास, सुरेन्द्रनगर, गुजरात-363031।
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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/सयुक्त 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।

