

	<b>::आयुक्त (अपील) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::</b> <b>O/O THE COMMISSIONER (APPEALS), GST &amp; CENTRAL EXCISE</b>	 सत्यमेव जयते
	द्वितीय तल, जी एस टी भवन / 2 <sup>nd</sup> Floor, GST Bhavan रेस कोर्स रिंग रोड / Race Course Ring Road राजकोट / Rajkot - 360 001 Tele Fax No. 0281 - 2477952/2441142 Email: commrappl3-cexamd@nic.in	

DIN20230164SX0000111A7D

अपील / फाइल संख्या/  
Appeal / File No.  
V2/90/BVR/2022

मूल आदेश सं /  
O.I.O. No.  
BHV-EXCUS-000-JC-PK-024-  
2021-22

दिनांक/Date  
30-03-2022

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

**BHV-EXCUS-000-APP-001-2023**

आदेश का दिनांक /  
Date of Order:  
12.01.2023

जारी करने की तारीख /  
Date of issue: 18.01.2023

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

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

अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा  
उपरलिखित जारी मूल आदेश से सृजित: /

Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhidham :

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

**M/s. Vijaybhai Kalabhai Barad (Ajay Transport), Main Area, Main Road, Ajotha, Dist-Gir Somnath, Gujrat-362268**

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 मूल्यंकन से सम्बंधित 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 अपीलें 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, 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।

The appeal 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 नियमवाली, 1994, के नियम 9(1) के तहत 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, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is upto 5 Lacs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-



- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। /

The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत रकम  
(ii) सेनवेट जमा की ली गई गलत राशि  
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थान अर्ज़ी एवं अपील को लागू नहीं होगा। /

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,

Under Central Excise and Service Tax, "Duty Demanded" shall include :

- (i) amount determined under Section 11 D;  
(ii) amount of erroneous Cenvat Credit taken;  
(iii) amount payable under Rule 6 of the Cenvat Credit Rules

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

- (C) **भारत सरकार को पुनरीक्षण आवेदन :**  
**Revision application to Government of India:**  
इस आदेश को पुनरीक्षण प्रक्रिया का निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /  
A revision application lies to the Under Secretary to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। /  
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse
- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /  
In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /  
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायावधि पर या बाद में पारित किए गए हैं। /  
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संश्लेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /  
The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-in-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। /  
जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 1000 - का भुगतान किया जाए।  
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के प्रति हुए भी की लिखी पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थान आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /  
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.
- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर 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.



अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbec.gov.in](http://www.cbec.gov.in) को देख सकते हैं। /  
For elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website [www.cbec.gov.in](http://www.cbec.gov.in).

**:: अपील आदेश / ORDER-IN-APPEAL ::**

Shri Vijaybhai Kalabhai Barad, Ajay Transport, Ajotha-362268 (hereinafter referred to as "Appellant") has filed the present Appeal against Order-in-Original No. BHV-EXCUS-000-JC-PK-024-2021-22 dated 30.03.2022 (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 2015-16 & 2016-17 of the Appellant. Letters dated 09.07.2020 & 29.07.2020 were issued by the Jurisdictional Range Superintendent requesting the Appellant to provide information/documents for the Financial year 2015-16 & 2016-17. However, no reply was received from the Appellant.

3. In absence of data/information, a show cause notice dated 29.12.2020 was issued to the Appellant demanding Service Tax and cess to the tune of Rs. 65,72,328/- under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as 'the Act') alongwith interest under Section 75 of the Act. It was also proposed to impose penalties under Section 78, 77(2) and 77(1)(c) of the Act upon the Appellant.

4. The adjudicating authority vide the impugned order confirmed Service Tax demand of Rs. 3,26,250/- under Section 73(1) along with interest under Section 75 of the Act, imposed penalty of Rs. 3,26,250/- under Section 78 of the Act and also imposed penalty of Rs. 10,000/- each under Section 77(2) and 77(1)(c) of the Act. The Adjudicating Authority dropped the demand of Rs. 62,46,078/-.

5. Being aggrieved, the Appellant has preferred the present appeal on following grounds:

(i) The impugned order has been passed without jurisdiction and is unconstitutional and erroneous, as it completely fails to comply with the constitutional scheme so applicable after the enactment of the Central Goods and Service Tax Act, 2017.

(ii) The impugned order is a non-speaking order to the extent it has confirmed the Service Tax liability of Rs. 3,26,250/- on the receipt of Rs. 22,50,000/- during the year 2015-16 as there has been no short payment of Service Tax by them. The service pertaining to giving trucks on hire and income received from the same is exempted from service tax by virtue of Entry No. 22(b) of Notification No. 25/2012-Service Tax dated 20.06.2012 and hence the income earned by them is not liable to Service Tax. They relied upon the case of Cyril L. Lobo (Dead) Vs. Juliana Maria Lasarado - 2004 (7) SCC 431, Assistant



*(Signature)*

Commissioner of Commercial Tax Department Vs. Shukla & Brothers - 2010 (254) ELT 6 (SC)= 2011 (22) STR 105 (SC).

(iii) The impugned order fails to consider that the Department has failed to discharge its burden of proof to the effect that the Appellants are liable to pay Service Tax and they rely on UOI Vs. Garware Nylons Ltd.-1996 (10) SCC 413, Commissioner of Customs, Mumbai Vs. Foto Centre Trading Co. - 2008 (225) ELT 193 (Bom.), Commissioner of C.Ex., Chandigarh Vs. Khalsa Charan Singh and Sons - 2010 (255) ELT 379 (P&H), Rajendra Jagannath Parekh and Ajay Shashikant Parekh V. Commissioner of Customs - 2004 (175) ELT 238 (Tri.-Mumbai), Commissioner Vs. Kuber Tobacco Products Ltd. - 2016 (339) ELT A130 (Del.), Commissioner of Central Excise, Coimbatore Vs. Vyas Textiles - 2015 (327) ELT 681 (Tri.-Chennai), Commissioner of Customs, Amritsar V. Neeldhara Transfers - 2012 (284) ELT 673 (Tri.-Del.).

(iv) Impugned Order fails to consider that the Department while issuing the Show Cause Notice relied solely upon 26AS Statements for confirmation of Service Tax demand which cannot be based solely on it as held in M/s. Ved Security Vs. CCE, Ranchi-III - 2019 (6) TMI 383-CESTAT Kolkata, M/s. Lord Krishna Real Infra Pvt. Ltd. Vs. CCE, Noida - 2019 (2) TMI 1563-CESTAT Allahabad.

(v) Impugned Order fails to consider that no penalty can be imposed in the present case as the Appellant was under a bona-fide belief. No penalty imposable under Section 77(1)(a) of the Act for not taking Service Tax registration and for not filing of periodical S.T.-3 returns.

(v) No suppression since the demand is based on the Balance Sheet which is a public document.

(vi) No interest to be demanded since the tax demand itself is not sustainable. The Section 80 will apply in the present case.

6. The matter was posted for virtual hearing on 28.12.2022. Advocate Ambarish Pandey appeared for personal hearing and reiterated the submissions in the appeal. He submitted that the Adjudicating Authority had accepted their plea of tax liability being as recipients of GTA in respect of body corporates and had dropped the major portion of the demand. However, the Adjudicating Authority has confirmed the demand in respect of remaining receipts due to insufficient supporting documents. He undertook to submit such documents with additional submissions within a week and requested to allow the appeal.

6.1 The advocate of the Appellate submitted additional reply with documents through email dated 03.01.2023. The additional reply is akin to the grounds of appeal submitted by the Appellant. They further stated that they had provided trucks on hire to various GTAs who in turn used those trucks for



*Handwritten signature*

transportation of goods for their clients from one place to another. Their role was limited to providing the trucks on hire for agreed consideration and no accountability on their part to the consignor or consignee. They also submitted copy of Service Tax Registration of M/s. Samudra Corporation who is registered as GTA.

7. I have carefully gone through the case records, impugned order and appeal memorandum filed by the Appellant. I find that Show Cause Notice had been issued without verifying any data or nature of services provided by the Appellant as the same had been issued only on the basis of data received from the Income Tax department. However, the Adjudicating Authority has considered the written submission dated 12.02.2021 of the Appellant has dropped the demand of Rs. 62,46,078/- and confirmed the demand of Rs. 3,26,250/- on truck hire rent income by holding the said service as declared service under clause (f) of Section 66E of the Act.

8. The Adjudicating Authority found 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 and held 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 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."*

8.1 I find that lower Adjudicating Authority has not discussed or elaborated reasoning for arriving of 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.

8.2 As per the Tax Audit Report Part-B of form No. 3CD submitted by the Appellant, their nature of business or profession is Transporter. It appears from the books of account that the Appellant has borne the expenses. Further, from the documents submitted by the appellant, it appears that during the relevant



*[Handwritten signature]*

period, the Appellant had never made any agreement / contract with the recipient of the services. Instead, they had supplied the said trucks for transportation of goods to M/s. Samudra Enterprise, Veraval in which the position and control always lies with the Appellant. Further, on verification of copies of Invoices submitted by the Appellant, it appears that they charged the truck hire rent on month basis.

8.3 In view of the above, it is clear that though the Appellant has provided their trucks on hire rent basis to M/s. Samudra Enterprise who is a registered Goods Transport Agency 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. Instead, the services provided by the Appellant falls within Entry 22(b) of Notification No. 25/2012-Service Tax dated 20.06.2012 which 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*

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

For this, the Appellant has provided copy of Service Tax registration of M/s. Samudra Enterprise, Veraval having Service Tax registration No. AAMPF6487ASD002 who is a registered Goods Transport Agency/ transport of goods by road service. Therefore, it is clear that the Appellant provided their trucks on hire basis to a goods transport agency for transportation of goods and charged rent per month basis. Therefore, I find that the case of Appellant is covered under Notification 25/2012-Service Tax dated 20.06.2012 at Entry No. 22(b) and not under clause (f) of Section 66(E) of the Act.

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

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

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

सत्यापित / Attested



Superintendent  
Central GST (Appeals)  
Rajkot

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

आयुक्त (अपील)/Commissioner (Appeals)

By R.P.A.D.

To,  
Shri Vijaybhai Kalabhai Barad (Ajay  
Transport), Main Road, Ajotha,  
Dist.: Gir Somnath, Gujarat-362268

सेवा में,  
श्री विजयभाई कालाभाई बारड, मेडन रोड,  
अजोठा, जिल्ला: गिर सोमनाथ, गुजरात-  
362268 ।



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, मण्डल-3 भावनगर को आवश्यक कार्यवाही हेतु।
- 5) गार्ड फाइल।

