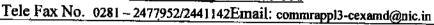


::आयुक्त (अपीत्स) का कार्यालय,वस्तु एवं सेवा करऔरकेन्द्रीय उत्पाद शुल्क:: O/O THE COMMISSIONER (APPEALS), GST &CENTRAL EXCISE

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

रेस कोर्स रिंग रोड / Race Course Ring Road <u>राजकोट / Raikot – 360 001</u>





DIN20230264SX00002732C2

अपील / फाइलसंख्या/ Appeal /File No. GAPPL/COM/STP/1324/2022

मूल आदेश सं / O.I.O. No. 248/AC/HG/BVR-2/21-22 दिनां**क/**Date

28-03-2022

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

BHV-EXCUS-000-APP-024-2023

आदेश का दिनांक / Date of Order: 30.01.2023

जारी करने की तारीख / Date of issue:02.02.2023

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

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

प अपर आयुक्त/ संयुक्त/ अप्युक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/वस्तु एवंसेवाकर,राजकोट / जामनगर / गांधीधाम। द्वारा उपरतिखित जारी मूल आदेश से सुजित: /

Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / QST, Rejkot / Jamnager / Gendhidham :

अपीलकर्ताकप्रतिवादी का नाम एवं पता /Name & Address of theAppellant&Respondent :-

M/s. Maheshbhai Devatbhai Khuman, Viiage: Adsang,Pin-364522,Taluka: Savarkundia, Dist. -Amreli Gujrat

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 संवाकर अपीलीय न्यायाधिकरण के प्रांत 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 *u*

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

वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले 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,केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट)की पश्चिम क्षेत्रीय पीठिका,,द्वितीय तल, बहुमाली भवन असावी अहमदाबाद- ३८००१६को की जानी चाहिए ॥

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016in case of appeals other than as mentioned in para- I(a) above अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपीलानियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपन्न EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए । इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग अगर लगया 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 जुमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रिजेस्टार के ना किसी भी साविज्ञ के वे के द्वारा जारी रेखांकित बैंक द्वारा किया जाना चाहिए। संबंधित उपालक की प्रति संवप्त के साथ रियत है। स्थगन आदेश (स्टे आंडर) के लिए आंवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क अमा 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 dutydemand/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 stay shall be accompanied by a fee of Rs. 500/-

अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर त्रियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्न S.T.-5 में वार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न कर (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की माँग , ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख था उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो कमशः 1,000/- रुपये का निर्धारित जमा शुक्त की प्रति संलग्न करें। निर्धारित शुक्त का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रिजेस्टार के नाम से किसी भी सार्विजनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ज्ञाप्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-कर के साथ 500/- रुपए का निर्धारित शुक्क जमा करना होगा ।/

साथ 500% रुपए का निशास्त शुल्क जमा करना हो।। ।।

(Georgeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in the Appellate 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 fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is more accompanied by a fees of Rs. 5000/- where the amount of service tax & interest demanded & penalty levied is more than first lakhs, Rs. 10,000/- where the amount of service tax & interest demanded & penalty levied is more accompanied by a fee of Rs. 500/
Assistat Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is serviced. / Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

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(i)

BI

वित्त अधिनियम, 1994 की धारा 88 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1894, के नियम 9(2) (i) 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 शुक्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और अग्युक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्का 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 For ST.7 as The appeal under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified of Commissioner Central Excise or Commissioner under Rules) (one of which shall be a certified copy) and copy of the order passed by the Commissioner under Rules Tribunal. Commissioner of Central Excise / Service Tax to file the appeal before the Appellate Tribunal. Commissioner of Central Excise / Service Tax to file the appeal before the Appellate Tribunal. Rules are used to the appeal before the Appellate Tribunal. The Rules are used to the appeal before the Appellate Tribunal. Rules used to the appeal before the Appellate Tribunal. Rules are used to the appeal before the Appellate Tribunal. The Rules are used to the appeal before the Appellate Tribunal. Rules are used to the appeal before the Appellate Tribunal. Rules are used to the appeal before the Appellate Tribunal. Rules are used to the appeal before the Appellate Tribunal. Rules are used to the appeal before the Appellate Tribunal. Rules are used to the appeal before the Appellate Tribunal. Rules are used to the appeal before the Appellate Tribunal. Rules are used to the appeal before the Appellate Tribunal. Rules are used to the appeal before the Appellate Tribunal. Rules are used to the appeal before the Appellate Tribunal. Rules are used to the appeal before the Appellate Tribunal. Rules are used to the appeal before the Appellate Tribunal. Rules are used to the appeal before the Appellate Tribunal. Rules are used to the appeal before the Appellate Tribunal. Rules are used to the appeal before the Appellate Tribunal. Rules are used to the appeal before the Appellate Tribunal. Rules are used to the appeal befo (ii) केन्द्रीय उत्पाद शुक्क एवं सेवाकर के अंतर्गत "मांग किए गए शुक्क" में निम्न शामिल हैं धारा 11 डी के अंतर्गत रकम सेनवेट जमा की ली गई गलत राशि सेनवेट जमा नियमावली के नियम 8 के अंतर्गत देय रकम

(ii)

- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं° 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष (iii)

- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं॰ 2) अधिनेयम 2014 के आरंभ से पूर्व किसी अपीलीय प्रधिकारी के समक्ष विचाराधीन स्थान अज़ी एवं अपील को लागू नहीं होगे।!

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.

भारत सरकार कोपुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामला में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के ग्रथमपरंतुक के अंतर्गतअवर इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामला में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के ग्रथमपरंतुक के अंतर्गतअवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, की किया जाना चाहिए। /
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, A re (C)

यदि माल के किसी नकसान के मामले में, जहां नकसान किसी माल को किसी कारखाने से भंडार गृह के पारगुमन के दौरान पा किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगुमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के जुकसान के ति कारखाने या किसी भंडार गृह में माल के जुकसान के ति पारगण में। In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse (i)

भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुक्क के खुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। I 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. (ii)

यदि उत्पाद शुस्क 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. (iii)

सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए है। fivì चाद न भारत । प्रमुख । पर हा। 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)

पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए । * जहाँ सलग्न 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 ने का भुगतान किया जाए। (vi) 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.

पदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भगतान उपर्यंक दंग से किया जाना चाहिये। इस तथ्य के हींचे हुए भी की लिखी पढ़ी कार्य से बचने के लिए यंथास्थित अपीलीय नयाधिकरण को एक अपील यो कंद्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various umbers 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. (D)

यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-। के अनुसार मूल आदेश एवं स्थान आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लेगा 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. (E)

सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित 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. (F)

उच्च अपीलीय प्राधिकारी को अपील द्वाखिल 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. (G)



:: अपील आदेश / ORDER-IN-APPEAL ::

M/s. Maheshbhai Devatbhai Khuman. Adsang. Dist.: Amreli (hereinafter referred to as "Appellant") has filed the present Appeal against Order-in-Original No. 248/AC/HG/BVR-2/21-22 dated 28.03.2022 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central GST Division-3, 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 of the Appellant. Letter dated 14.08.2020 was issued by the Jurisdictional Range Superintendent requesting the Appellant to provide information/documents viz. copies of I.T. Returns, Form 26AS, Balance Sheet (including P&L Account), VAT/ Sales Tax Returns, Annual Bank Statement, Contracts/ Agreements entered with the persons to whom services provided etc. for the Financial year 2014-15 to 2017-18 (upto June-2017). However, no reply was received from the Appellant.
- 3. In absence of data/ information, a Show Cause Notice dated 23.12.2020 was issued to the Appellant, demanding Service Tax and cess to the tune of Rs. 40,09,690/- 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 77(1)(a), 78, 77(2) and 77(1)(c) of the Act upon the Appellant.
- 4. The adjudicating authority vide the impugned order dropped the demand of Rs. 2,52,618/- and confirmed Service Tax demand of Rs. 37,57,072/- under Section 73(1) along with interest under Section 75 of the Act, imposed penalty of Rs. 37,57,072/- under Section 78 of the Act, imposed penalty of Rs. 5,000/- each under Section 77(1)(a), 77(2) and 77(1)(c) of the Act.
- 5. Being aggrieved, the Appellant has preferred the present appeal on various grounds that the Adjudicating Authority wrongly confirmed the demand and interest and also wrongly imposed various penalties.
- 6. The matter was posted for hearing on 10.01.2023. CA Abhishek P Doshi appeared for personal hearing and handed over additional written submissions. He reiterated the contents thereof and those in the appeal. He submitted that the Appellant is an individual truck owner and not a GTA. He drew attention to the RC books for the vehicles owned by the Appellant and submitted that such services were in the negative list. He, therefore, requested to set aside the Order-In-Original.

The CA on behalf of the Appellant handed over additional written ission wherein it has been stated that they are proprietorship firm in the सत्यापित / Attested

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name of Karan Enterprise engaged in providing services of Transportation of Goods by road and works contract services as sub-contractor in government work. The Show Cause Notice was issued on 22.12.2020 for the period 2015-16 & 2016-17 based on higher value as per Form 26AS. They made detailed reply alongwith supporting documents stating that they are engaged in services of transportation of goods by road services and some works contract services. The Adjudicating Authority confirmed the demand on transportation and dropped the demand on other services. They provided transportation services from stone crusher at Thordi Village to nearby areas within 20-30 kilometres only. They provided transportation services through vehicles i.e. trucks and tractors and thus their services will not fall within the meaning of Goods Transport Agency Service. They have not issued any consignment notes. Therefore, their services are exempt under negative list in Section 66D(p). The intention of the government was not to levy tax on truck owners or operators as clarified by Finance Minister in budget speech on 08.07.2004. Thus, there is no Service Tax on transportation provided by truck owners. The Adjudicating Authority has not considered their submission by simply stating that no supporting documents for transportation services have been provided. They submitted copy of Trading and Profit & Loss account, sample copy of retain invoices and copy of ledger of transportation income. They further stated that even if it is presumed that services are of transportation of goods are taxable, then also responsibility to pay tax is on recipient under reverse charge mechanism under Notification No. 30/2012-Service Tax dated 20,06,2012.

- 6.2 The Show Cause Notice based on ITR/26As is not valid as the same has been issued in usual course of charges only related to appellant's information and with nothing more emphasized on the nature of activity to be classified under a particular service. They rely on CESTAT Delhi judgment in the case of Deltax Enterprises Vs. CCE, Delhi 2018 (10) GSTL 392 (Tri.-Del), Faquir Chand Gulati Vs. Uppal Agencies Pvt. Ltd. 2008 (12) STR 401 (S.C.), Krishna Construction Co. Vs. CCE & S.T. Bhavnagar, Final Order No. A/10973/2022 CESTAT- Ahmedabad, Kush Constructions Vs. CGST Nacin- 2019 (24) GSTL 606 (Tri.-All), Luit Developers (P) Ltd. Vs. Commissioner of CGST & Central Excise Dibrugarh 2022 (136) taxmann.com 109 (Kolkata-Cestat).
- 6.3 The Show Cause Notice is based on ITR/Form 26AS which is available with the Government and hence the allegation of suppression cannot be made and they placed reliance on decision in the case of Pappu Crane Service Vs. Commissioner of Service Tax Appeal No. 70707 of 2018-DB, Luit Developers (P) Ltd. Vs. Commissioner of CGST & Central Excise Dibrugarh 2022 (136) taxmann.com 109 (Kolkata-Cestat). The Show Cause Notice does not have any

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evidence to show that the Appellant suppressed any information with an intention to evade payment of Service Tax. The Show Cause Notice dated 22.12.2020 for the period 2015-16 & 2016-17 is paired by limitation. The Adjudicating Authority has wrongly charged interest and imposed penalties. They relied on the case of Hindustan Steel Ltd. Vs. State of Orissa - 2002-TIOL-148-SC-CT-LB and Commissioner of Service Tax Vs. Motorworld and others- 2012-TIOL-418-HC-KAR-ST.

- 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. The Adjudicating Authority has confirmed the demand of Service Tax vide impugned order without considering the reply filed by the Appellant.
- 8. I find that the main issue that is to be decided in the instant case is whether the activity carried out by the Appellant is covered under exemption and as to whether the amount received for providing the services is taxable, or otherwise.
- The Appellant is a proprietorship firm in the name and style of M/s. Karan Trading dealing in manufacture and retail of machine cut black trap, kapchi, greet and metal. From the profit & loss account for the year 2015-16, it is seen that total income during the year was Rs. 1,01,28,879/- on which Service Tax has been demanded by the Adjudicating Authority. Out of this, an amount of Rs. 83,86,693/- has been shown as Transport Income and remaining amount of Rs. 17,42,186/- has been shown as Contract work income. Likewise for the year 2016-17, the total income is from transport income of Rs. 1,69,40,017/- For transportation income, it is the contention of the Appellant that the same is exempt under negative list since they are not Goods Transport Agency being individual truck owner. He has produced copies of R. C. book for goods carrier vehicle No. GJ25U0055, GJ14W1876 and one tractor having registration number GJ14D6329.
- 10. The Appellant stated that since he is an individual truck owner carried out transportation of metal. He has produced copies of retain invoices wherein it has been mentioned that he has carried out transportation of metal and have charged transportation on metric ton basis to various customers. He has charged per trip basis for transportation done through tractor. Therefore, it appears that the services provided by him are squarely covered under Section 66D(p)(i)(A) which is re-produced below for reference:

"SECTION 66D. Negative list of services.— सत्यापित / Attested

My

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The negative list shall comprise of the following services, namely:-

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

On plain reading of the above provisions, it is amply clear that services by way of transportation of good by road excluding services of a goods transportation agency are covered under negative list. As enumerated above, the services provided by the Appellant are not as a Goods Transport Agency services. Therefore, the services provided by the Appellant are well within the ambit of Section 66D(p)(i)(A) of the Act and hence the Appellant is not liable to any service tax.

- 11. In view of discussions and finding, I set aside the impugned order and allow the appeal filed by the Appellant.
- 12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।
- 12. The appeal filed by Appellant is disposed off as above.

सत्यापित / Attested

Superintendent

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

Central GST (Appeals) आयुक्त (अपील)/Commissioner (Appeals)
Raikot

By R.P.A.D.

To, M/s. Maheshbhai Devatbhai Khuman, Village: Adsang, Taluka: Savarkundla, Dist.: Amreli, Pin-364522. सेवा में,

मे. महेशभाई देवातभाई खुमाण, गाँव: अडसंग, तालुका: सावरकुंडला, जिल्ला:

अमरेली, पिन: ३६४५२२.

प्रतिलिपि :-

- 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 हेत्।
- 3) अपर 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, भावनगर-१ को आवश्यक कार्यवाही हेतु।
- 5) गार्ड फ़ाइल।

