



::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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DIN20230264SX0000616616

अपील / फाइल संख्या /

Appeal / File No.

GAPPL/COM/STP/1462/2022

मूल आदेश सं /

O.I.O. No.

21/AC/NIS/BVR-3/2021-22

दिनांक / Date

12-04-2022

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

BHV-EXCUS-000-APP-029-2023

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.

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. Hareshbhai Kanjibhai Vala,, 6, Kumbharwada, Rajula-365560 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 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 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 अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- 380016 को की जानी चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की 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। 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 demanded/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 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। 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 Rs. 5 Lakhs 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/-

- (ii) 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 उप-आयुक्त, 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 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.
- (iii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं 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 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 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 अर्जा 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 पुनरीक्षणयाविका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर 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, जहाँ 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 छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /
In case of rebate of duty of excise on goods exported to any country or territory outside India of an excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
(iv) 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 (नं 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समाप्ति तिथि 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 प्रतियाँ 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 प्रतियाँ 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 OI/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 आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान उपर्युक्त दंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखी पढ़ी कार्य से बचने के लिए यथासंभव 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-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट लगा होना चाहिए। /
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.
(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में बर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की 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.
(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। /
For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in.

:: अपील आदेश / ORDER-IN-APPEAL ::

~~M/s. Hareshbhai Kanjibhai Vals, Rajula~~ (hereinafter referred to as "Appellant") has filed the present Appeal against Order-in-Original No. 21/AC/NIS/BVR-3/2021-22 dated 12.04.2022 (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 2014-15, 2015-16 & 2016-17 of the Appellant. Letter dated 22.07.2020 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, 2015-16 & 2016-17. However, no reply was received from the Appellant.

3. In absence of data/ information, a Show Cause Notice dated 27.08.2020 was issued to the Appellant, demanding Service Tax and cess to the tune of Rs. 16,25,880/- 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 confirmed the demand of Rs. 6,35,215/- under Section 73(1) along with interest under Section 75 of the Act, imposed penalty of Rs. 6,35,215/- under Section 78 of the Act, imposed penalty of Rs. 1,000/- each under Section 77(1)(a), 77(2) and 77(1)(c) of the Act. The Adjudicating Authority dropped the demand of Rs. 9,90,665/-.

5. Being aggrieved, the Appellant has preferred the present appeal on various grounds that the Adjudicating Authority wrongly confirmed the demand, interest and wrongly imposed various penalties.

6. The matter was posted for hearing on 25.01.2023. CA Abhishek P Doshi appeared for personal hearing and handed over paper book containing written submissions with supporting documents. He reiterated the submissions therein and those in the appeal. He submitted that the demand for April to September-2014 is beyond the extended period of 5 years. He submitted that the Adjudicating Authority had not deducted the value for material sales despite the same being mentioned in their profit & loss account, balance sheet and account books due to absence of VAT return. He drew attention to the invoices for material sales in respect of bricks sold by them and submitted that sale of bricks

was exempt from VAT. Regarding transportation services he submitted that per trip-wise rate of local transport was less than Rs. 750/-. The Adjudicating Authority has not allowed the exemption under entry 21(c) of Notification No. 25/2012 despite all supporting documents such as Balance Sheet, Profit & Loss, CA certificate, invoices and books of accounts having been submitted to the Adjudicating Authority. He requested to allow the benefit due to him and to drop the Order-In-Original.

6.1 The CA on behalf of the Appellant handed over paper-book wherein it has been stated that they are proprietorship firm engaged in providing services of Transportation of Goods by road, sub-contractor in government works and sale of goods during the period under consideration. They were not required to obtain Service Tax registration as the aggregate value of taxable services does not exceed Rs. 10 Lakhs during the period under dispute. The Show Cause Notice was issued based on value of services as per ITR filed by them.

6.1 During the year 2014-15, out of total value of services of Rs. 77,97,699/-, an amount of Rs. 10,61,359/- was towards material sales, an amount of Rs. 15,89,000/- was towards transportation services and an amount of Rs. 51,47,340/- was towards works contract services. (i) They mainly sold bricks during the year and for this they submitted copy of ledger, copy of invoices and copy of Profit & Loss account for sale of materials. Since the sale of bricks is exempted from VAT, they were not liable to take registration under the Gujarat VAT Act, 2005. They also submitted CA certificate for actual nature of receipts earned by them during the period under dispute. The sale of material cannot be considered as taxable services and no Service Tax can be charged on such sale of material. (ii) They have provided goods transportation by road from Mandal to Madhiya, Datardi to Madhiya, Lothpur/ Mandardi/ Katar/ Mandal to Rajula through various tractors. The distance of transportation is around 8 to 10 Kms. And therefore, multiple trips can be carried out during the day. They have charged per ton basis for transportation of goods. Their transportation services are of same nature and below threshold of Rs. 750/- and therefore, they are eligible for exemption under entry 21(c) of mega exemption Notification No. 25/2012 dated 20.06.2012. They are eligible for 75% abatement under transportation of goods by road services. (iii) They have provided works contract service mainly to 3 parties during the year under consideration. Their turnover was less than Rs. 10 lakh during 2013-14 and hence they are eligible for threshold limit of Rs. 10 Lakhs as per Notification No. 33/2012. They have provided works contract services as sub-contractor for the government work and hence they are eligible for exemption under Entry No. 12, 13 and 29(h) of the Notification No. 25/2012 dated 20.06.2012. The Adjudicating Authority has

totally ignored their submissions as well as CA certificate. The Show Cause Notice was issued on 27.08.2020 whereas the extended limitation period comes to end on 25th October, 2019 for the period April-2014 to September-2014 and hence the demand for this period is time barred. The entire works contract services was provided during April-2014 to September-2014 and thus the entire demand on works contract services is time barred.

6.2 During the year 2015-16, out of total value of services of Rs. 20,99,399/-, an amount of Rs. 5,77,500/- was towards transportation services and an amount of Rs. 15,21,899/- was towards works contract services. (i) They have provided goods transportation by road services during the year under consideration. They transported the goods from Mandardi/ Katar/ Mandall to Rajula through various tractors. The distance of transportation is around 8 to 10 Kms. And therefore, multiple trips can be carried out during the day. They have charged per ton basis for transportation of goods. Their transportation services are of same nature and below threshold of Rs. 750/- and therefore, they are eligible for exemption under entry 21(c) of mega exemption Notification No. 25/2012 dated 20.06.2012. They are eligible for 75% abatement under transportation of goods by road services.

6.3 During the year 2016-17, out of total value of services of Rs. 23,84,473/-, an amount of Rs. 6,44,000/- was towards transportation material sales and an amount of Rs. 17,40,473/- was towards works contract services. (i) They mainly sold bricks during the year and for this they submitted copy of ledger, copy of invoices and copy of Profit & Loss account for sale of materials. Since the sale of bricks is exempted from VAT, they were not liable to take registration under the Gujarat VAT Act, 2005. They also submitted CA certificate for actual nature of receipts earned by them during the period under dispute. The sale of material cannot be considered as taxable services and no Service Tax can be charged on such sale of material.

6.4 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 Larger period cannot be invoked since 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 evidence to show that the Appellant suppressed any information with an intention to evade payment of Service Tax. The Show Cause Notice dated 27.08.2020 for the period 2014-15 to 2016-17 is barred by limitation as period of 5 years for April-2014 to September-2014 was over by October-2019. 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 vide impugned order, after considering the reply filed by the Appellant, has partly dropped and partly confirmed the demand of Service Tax on works contract, sales of service and transportation service in absence of supporting documents.

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.

9. On verification of profit & loss account for the year 2014-15 & 2016-17, there is mention of material sales to the tune of Rs. 10,61,359/-, 6,44,000/- for which they have also produced copies of invoices wherein there is mention of sales of bricks. Thus, I find that the material sales are nothing but trading of goods which is falling under negative list as per Section 66(e) of the Act and thus, the Appellant is not liable to pay Service Tax on material sales amount.

10. During the financial year 2014-15 & 2015-16, there is mention income from transportation of goods to the tune of Rs. 15,89,000/- and Rs. 5,77,500/- respectively. It is the contention of the Appellant that their services are exempt under entry 21(c) of Notification No. 25/2012 since per trip wise rate of local transport was less than Rs. 750/-. It is on record that at the time of adjudication, the Appellant contested before the Adjudicating Authority that their transportation services are exempt under negative list under Section 66D(p) & 66D(e), whereas at the time of appeal before this authority they have

contested that their services are exempt by way of entry 21(c) of Notification No. 25/2012. On verification of copies of bills supported by trip chart, it is found that the Appellant has transported the goods and the total amount of the trip was below Rs. 750/-. Thus, I find force in the arguments advanced by the Appellant and I hold that they are eligible for benefit of entry No. 21(c) of Notification No. 25/2012-Service Tax dated 20.06.2012.

10. During the Financial Year 2014-15, the Appellant has earned income of Rs. 51,47,340/- and claimed that the same is for works contract services provided to M/s. Gujarat Cola Pvt. Ltd. It is their argument that the said amount was for the period April-2014 to September-2014 is time barred since the Show Cause Notice would have to be issued on or before 25.10.2019 but the same has been issued on 27.08.2020 in the present case. On verification of Form 26AS, the transaction dates for this value are before October-2014. 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.

10.1 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 has not filed any return and hence the relevant date is the last date on which such return was required to be filed. For the period from April 2014 to September 2014, the ST-3 return was required to be filed by 25th of October 2014. As such, the show cause notice was required to be served latest by 24th of October 2019, but in the present case notice was served on 27.08.2020 and hence the demand on value of Rs. 51,47,340/- for the period from April 2014 to September 2014 is clearly hit by limitation of time under Section 73 ibid.

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.

(Signature)
30-1-2023

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

By R.P.A.D.

To, M/s. Hareshbhai Kanjibhai Vala, 6, Kumbharwada, Rajula, Dist.: Amreli, Pin-365560	सेवा में, मे. हरेशभाई कानजीभाई वाला, 6, कुंभारवाडा, राजुला, जिल्ता: अमरेली, पिन: 365560.
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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 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।