

	: : आयुक्त (अपील) का कार्यालय, वस्तु एवं सेवा करबीरकेन्द्रीय उत्पाद शुल्क : : O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE	 सत्यमेव जयते
	द्वितीय तल, जी एस टी भवन / 2 nd 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	

DIN20230264SX000000BE9C

क अपील / फाइल संख्या / Appeal / File No. **GAPPL/COM/STP/1683/2022** मूल आदेश सं / O.I.O. No. **121/2021-22** दिनांक / Date **29-03-2022**

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

BHV-EXCUS-000-APP-060-2023

आदेश का दिनांक /

Date of Order:

13.02.2023

जारी करने की तारीख /

Date of issue: 20.02.2023

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

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

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, राजकोट / जामनगर / गांधीधामा 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 :

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

M/s. Rajubhai Ramabhai Jogarana (Jogikrupa Transport), At Juna Jassapar, Taluka: Sayla, District: Surendranagar

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 मांग, ब्याज की मांग और लगीया गया जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये 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 रजिस्ट्रार 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। स्वयं आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये 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 अंतर्गत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगीया गया जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये 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 रजिस्ट्रार 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। स्वयं आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये 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 of 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/-



- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकती 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 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.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35ए 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, बशर्ते 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
- (x) धारा 11 डी के अंतर्गत रकम
 - (xi) सेनवेट जमा की ली गई गलत राशि
 - (xii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं० 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन अपील अर्थात् 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 :
- (x) amount determined under Section 11 D;
 - (xi) amount of erroneous Cenvat Credit taken;
 - (xii) 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 की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपत्रक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, ससद 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 क्रेडिट केटी इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश को आयुक्त (अपील) के द्वारा वित्त अधिनियम, (नं० 2), 1998 की धारा 109 के द्वारा नियत की गई सार्वजनिक अथवा सेवाकर अधिनियम पर भरोसा किया जाए। / 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 संरेषण 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 के अदायगी के साथ-साथ 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 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 ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पत्री 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 filed 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 संबंधित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान आकषित 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. ~~Rajubhai Ramabhai Jogarana, Prop. Of Jogikrupa Transport,~~ Surendranagar (hereinafter referred to as "Appellant") has filed the present Appeal against Order-in-Original No. 121/2021-22 dated 29.03.2022 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central GST Division, Surendranagar (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that on the basis of data/ details provided by the Income Tax Department, various Income Tax Assessee, who declared in their Income Tax Returns for financial year 2015-16 & 2016-17 were found to have earned income by providing services classified under various service sectors. The Income Tax Department had 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 from providing services. The said data also contained the details of the Appellant who had not obtained Service Tax Registration under the Finance Act, 1994 (hereinafter referred to as 'the Act'). The Jurisdictional Superintendent issued letters dated 24.09.2020 and dated 08.12.2020 to the Appellant calling for the information/ documents for the financial year 2015-16 & 2016-17. No reply was received from the Appellant.

3. In absence of data/ information, a Show Cause Notice dated 22.12.2020 proposing to demand Service Tax of Rs. 14,99,392/- including all cesses under Section 73(1) of the Act by invoking extended period alongwith interest under Section 75 of the Act from the Appellant. It was also proposed to impose penalty under Section 77(1)(a), 77(2), 77 (1)(c) and Section 78 of the Act.

4. The adjudicating authority vide the impugned order ex-parte confirmed Service Tax demand of Rs. 14,99,392/- under Section 73(1) by invoking extended period of 5 years along with interest under Section 75 of the Act. The adjudicating authority imposed penalties of Rs. 10,000/- each under Section 77(1)(c) and Section 77(2) of the Act. The penalty of Rs. 14,99,392/- was also imposed upon the Appellant under Section 78 of the Act.

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

(i) The Adjudicating Authority has erred in confirming the demand of Service Tax alongwith interest and penalties though the activity carried out by them is covered under negative list under Section 66D(p) of the Act since he owns truck and is engaged in the activity of transportation of goods by road and earning transportation income as a truck owner/ operator. As per definition of Goods Transport Agency, the transportation of goods is not subject to Service Tax but



service in relation to transportation of goods is subject to Service Tax and issuance of consignment note is mandatory condition and they relied on the definition of consignment note as per Rule 4B of the Service Tax Rules, 1994. To become a goods transport agency, issue of consignment note is mandatory condition. They have not issued any consignment note by whatever name called and thus the conditions to become a Goods Transport Agency is not satisfied in their goods and hence they are not a Goods Transport Agency. They are individual truck owner as can be seen from fixed assets schedule to audited financial statement. They also submitted copy of Registration Certificate of vehicles owned by him. Further as per clause 10(a) of the Form 3CD of Tax Audit Report, the Appellant is transporter and not Goods Transport Agency. They also relied on budget speech of Finance Minister at the time of introduction of Finance Bill, 2004 wherein the Finance Minister clarified that there is no intention to levy Service Tax on truck owners or truck operators. Thus, they are not subject to Service Tax. They relied on the decisions in the case of Laxminarayan Mining Co. Vs. Commissioner of Service Tax, Bangalore - 2009 (16) STR 691, Karnataka High Court decision - 2012 (26) STR 517, Supreme Court decision reported at 2018 (11) GSTL 25 (SC), Karnataka High Court decision - 2018 (19) GSTL 483 (Kar.), CESTAT Bangalore decision - 2019 (27) GSTL 745 (Tri.-Bang.), Commissioner of Central Excise, Guntur Vs. Kanaka Durga Agro Oil Products Pvt. Ltd. - 2009 (15) STR 399 (Tri.-Bang.), Shreenath Mhaskoba Sakhar Karkhana Ltd. Vs. Commissioner of Central Excise, Pune-III - 2017 (3) GSTL 169 (Tri.-Mumbai), Commissioner of Central Excise and Service Tax, Aurangabad Vs. Jainkumar Fulchand Ajmera - 2017 (48) STR 52 (Tri.-Mumbai). The Adjudicating Authority while passing impugned order, ignored the Order-In-Original No. BHV-EXCUS-000-ADC-VM-017-2021-22 dated 15.02.2022 wherein it is categorically held that "truck owners are not liable to pay Service Tax on the service of transport of goods when such services are provided by themselves and not in the capacity of GTA.

(ii) The demand of service tax is time barred as the same has been served beyond a normal period of thirty months in terms of provisions of Section 73(1) of the Act and there was no fraud or collusion or wilful mis-statement or suppression of acts, or contravention of any of the provisions of the Act or of the Rules made thereunder with an intent to evade payment of service tax. The Show Cause Notice is based on income tax data/returns, which was filed on 30.08.2016 and the Show Cause Notice is issued on 22.12.2020 i.e. after 4 years from the date of such return. The data was available with the department from the concerned year in which return is filed and figures are taken from Income Tax Return without any variation, thus there cannot be any fraud, collusion or wilful misstatement as the I. T. return was available for verification. They rely



(Handwritten signature)

on decision of Hon'ble CESTAT, Allahabad Bench in Tax Appeal No. 70707 of 2018 (DB) in case of *M/s. Pappu Crane Service, Apex Electricals (P) Ltd. Vs. UOI - 1992 (61) ELT 413 (Guj.)*, *Pahwa Chemicals P. Ltd. Vs. CCE, Delhi - 2005 (189) ELT 257 (S.C.)*, *CCE Vs. Chemphar Drugs & Liniments - 1989 (40) ELT 276 (SC)*, *NRC Ltd. Vs. CCE, Thane-I - 2007 (5) STR 308 (Tri.-Mum)*, *Cosmic Dye Chemical Vs. Collector of C.Ex., Bombay - 1995 (75) ELT 721 (SC)*, Board Circular No. 5/92-CX.4 dated 13.10.1992 reiterated in Circular No. 1053/02/2017-CX dated 10.03.2017, *Vir Teja Roadlines Vs. Commissioner of C.Ex., Ahmedabad - 2012 (27) S.T.R. 290 (Tri.-Ahmd.)*. They denied the charges of suppression and the demand is barred by limitation and requested to drop the demand.

(iii) As per show cause notice, the Appellant received income from providing services classified under Section 194C, 194H, 194I and 194J of the Income Tax Act. These section of Income Tax Act are meant for providing deduction of tax at source on certain payment and not for classifying services. Show Cause Notice has assumed gross receipts as value of taxable services liable to service tax without cogent material. The Show Cause Notice is issued based on assumption and presumption and no demand can be confirmed based on such Show Cause Notice and requested to drop the demand. They rely on *Indo Nippon Chemicals Co. Ltd. Vs. Commissioner of C.Ex. Vadodara - 2009 (16) S.T.R. 639 (Tri.-Ahmd.)*, *Creative Travel Pvt. Ltd. V. CCE - 2016(41) S.T.R. 134 (Tri.-Del.)*, *Commissioner of Service Tax Ahmedabad Vs. Purni Ads. Pvt. Ltd. - 2010 (19) S.T.R. 242 (Tri.-Ahmd.)*, *Canny Detective & Security Services Vs. Commr. Of C.Ex. Ahmedabad - 2010 (20) S.T.R. 695 (Tri. - Ahmd.)*.

(v) No fresh proceedings can be initiated after introduction of GST as per the provisions of Section 174 (2)(e) of the CGST Act, 2017. Confirming demand based on Show Cause Notice which is issued in violation of Board Circular No. 1053/2/2017-CX. Dated 10.03.2017, is not legal and proper. The Show Cause Notice is not legal or proper and no demand can be confirmed being not sustainable. The penalties imposed under various sections are confirmed without making justification/discussion in the Show Cause Notice or Order-In-Original which is in violation of Board Circular dated 10.03.2017 supra. Thus the impugned order confirming demand, interest and penalties is liable to be dropped.

6. Personal hearing in the matter was held on 25.01.2023. CA Shri Keyur P Radia appeared for personal hearing and reiterated the submissions in the appeal. He submitted that the appellant is a transporter having own trucks who is not issuing consignment notes and is not a Goods Transport Agency. He drew attention to ITR, Profit & Loss account, Registration Certificate book in this regard and requested to set aside the Order-In-Original.

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



(Signature)

impugned order and appeal memorandum filed by the Appellant. The limited issue to be decided in the case on hand is that whether the Appellant is liable to pay service on the activity carried out by them or not.

8. I find that as per Form No. 3CD, column No. 10(a), the nature of business of the Appellant is Transporter. It is the contention of the Appellant that they are not Goods Transport Agency since they have transported the goods in the trucks owned by them without issuing any consignment notes. For fulfilling one of the condition for Goods Transport Agency, the issuance of consignment notes, for whatever name it is called, is mandatory. They also produced copies of truck registration certificates. On verification of the annual audit report, I find that the Appellant has reflected the trucks in its secured loan account and has also reflected depreciation in the fixed asset account under Plant Machinery head. From this evidence on records, I find that claim of the Appellant as truck owner is correct. The Appellant further submitted that the income from the transportation of goods by road is not subject to Service Tax as they have earned this income as on owner of vehicles for transportation of the goods by road.

8.1 It is the contention of the Appellant that they have not issued any consignment note and they are not Goods Transport Agency and not covered under the definition of Goods Transport Agency as provided under Section 65B(26) of the Act and hence not liable to Service Tax. As per the definition of Goods Transport Agency, it is apparently clear that to qualify the activity under the category of Goods Transport Agency, it should satisfy two conditions, viz. (1) a person should provide service in relation to transport of goods by road; and (2) he should issue consignment note. It is also clear that issue of consignment note has been stipulated as a mandatory ingredients to qualify the Appellant's activity under Goods Transport Agency. The consignment note can be any form having truck number, amount and load. In other words, the consignment note may not necessarily be in any format, but the documents accompanying the goods identifying the consignor and consignee, route of consignment enable to construe what a consignment note is. I find that the Appellant has categorically admitted that they have not issued any consignment note and hence Appellant is not covered under definition of Goods Transport Agency.

8.2 It is the contention of the Appellant that their service is exempt under the provisions of Section 66D(p) of the Act which is as under:

*“(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;”*

From the above, I inferred that the negative list excludes the services by way of transportation of goods by road except by a Goods Transport Agency or a courier agency. Thus, it can be said that the intention of the law is to tax only the



(Signature)

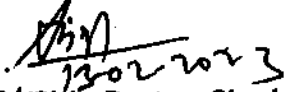
services of Goods Transport Agency and not the services by way of transportation of goods by road. Since the appellant is a truck owner and not a Goods Transport Agency, therefore, they are not liable to pay Service Tax on the income earned by transportation of goods by road.

9. In view of discussion 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

आर. एस. बोरीचा / R. S. BORICHA (शिव प्रताप सिंह) / (Shiv Pratap Singh)

अधीक्षक / Superintendent

के. व. एवं सेवा कर अपील, राजकोट

आयुक्त (अपील) / Commissioner (Appeals)

By R.P.A.D. CGST Appeals, Rajkot

To, M/s. Rajubhai Ramabhai Jograna, Prop. Jogikrupa Transport, at: Juna Jasapar, Taluka: Sayla, Dist. Surendranagar.	सेवा में, मे. राजुभाई रामाभाई जोगराणा, मालिक: जोगीकृपा ट्रांसपोर्ट, गाँव: जुना जसपर, तालुका: सायला, जिल्ला: सुरेन्द्रनगर, गुजरात।
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प्रतिलिपि :-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को ज्ञानकारी 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, सुरेन्द्रनगर को आवश्यक कार्यवाही हेतु।
- 5) गार्ड फ़ाइल।

