

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

DIN- 20230264SX00001681B5

क अपील / फाइल संख्या/  
Appeal / File No.

मूल आदेश सं /  
O.I.O. No.

दिनांक / Date

V2//94/BVR/2022

245/AC/NIC/BVR-3/2021-22 27-02-2023

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

**BHV-EXCUS-000-APP-076-2023**

आदेश का दिनांक /

Date of Order: 24.02.2023

जारी करने की तारीख /

27.02.2023

Date of issue:

श्री शिव प्रताप सिंह, आयुक्त (अपील्स), 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 / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /

Arising out of above mentioned OIO issued by Additional/Join/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. Habasi Mahmadidrish Abdulrehman, Neshadi Maholla, Jafrabad,,Amreli-365540 Mob no. 9824394302

इस आदेश (अपील) से व्यक्ति 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 प्राप्त अपील, केन्द्रीय उत्पाद शुल्क ओधोनेयम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 36 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 उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर० के पुराम, 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 असार्व 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- I(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 रजिस्टर के नाम से किसी भी साविजिनक क्षेत्र के बैंक द्वारा जारी रखाकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की रजिस्टर के नाम से किसी भी साविजिनक क्षेत्र के बैंक द्वारा जारी रखाकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की रजिस्टर के नाम से किसी भी साविजिनक क्षेत्र के बैंक द्वारा जारी रखाकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। स्थगन आदेश (स्टे ऑर्डर) के लिए आवदन-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.500/- Rs.10,000/- where amount of duty/demand/interest/penalty/refund is upto 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar 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 सकेंगी 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 माँग, ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 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 रजिस्टर के नाम से किसी भी साविजिनक क्षेत्र के बैंक द्वारा जारी रखाकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की रजिस्टर के नाम से होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवदन-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 fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is more than 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding 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/-





(D) In the case, if the order covers various numbers of orders- in Original, fee for each O.O. should be paid in the same respect as Central Govt., notwithstanding the fact that the one appeal to the Appellate Tribunal of the one place for each. (E) One copy of the application for stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended. (F) Court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended. (G) Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appeals Tribunal Procedure Rules, 1982.

For an appeal to be filed before the CESAT, 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 before the Central Excise Tax Authority alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores, unless otherwise provided by law.

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 Act, 2014.

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

:: अपील आदेश / ORDER-IN-APPEAL ::

M/s. Habasi Mahmadidrish Abdulraheman, Jafrabad (hereinafter referred to as "Appellant") has filed the present Appeal against Order-in-Original No. 245/AC/NIS/BVR-3/21-22 dated 26.03.2022 (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 2014-15 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 26.08.2020 was issued to the Appellant, demanding Service Tax and cess to the tune of Rs. 2,38,991/- 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. 2,38,991/- under Section 73(1) along with interest under Section 75 of the Act, imposed penalty of Rs. 2,38,991/- 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.

5. Being aggrieved, the Appellant has preferred the present appeal on various grounds that he is engaged in the sales business of petrol, diesel, oil etc. being a dealer of Hindustan Petroleum Corporation Ltd. (HPCL for sake of brevity) in the name and style of Honest Petroleum. He also owner of a tanker and providing transportation service to HPCL. He transports the goods by road without issuing any consignment note and therefore, his service does not under Service Tax but falls under negative list under Section 66D(p)(i)(A). They relied in the case of CCE Vs. Kanaka Durra Agro Oil Products (P) Ltd. - 2009 (3) TMI 130. He submitted the copy of certificate of registration of truck, Form 26AS and copies of Income Tax Return.

6. The matter was posted for hearing on 27.01.2023. Shri Pradyumansinh M. Rathod, consultant appeared for personal hearing and submitted that the



appellant is an individual truck owner using his truck for petroleum transport from HPCL to his petrol pump on which tax liability is discharged by HPCL. He has enclosed supporting documents with the appeal. He requested to set aside the Order-In-Original.

7. I have carefully gone through the case records, impugned order and appeal memorandum filed by the Appellant. I find that the issue to be decided in the case on hand is whether the activity carried out by the appellant is liable to Service Tax or otherwise.

8. 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 and the Adjudicating Authority has confirmed the demand of Service Tax vide impugned order.

9. The Appellant is a petrol pump owner in the name and style of Honest Petroleum. It is evident that he is an owner of a tanker and providing transportation service to HPCL. He transports the goods by road without issuing any consignment note and therefore his services are not of Goods Transport Agency. Being an individual truck owner, it is the contention of the Appellant that his services are covered negative list under 66D(p)(i)(A), which is reproduced below for reference:

**"SECTION 66D. Negative list of services.—**

*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;"

10. On plain reading of the above provision, facts of the case and documents submitted by the Appellant, I find that being an individual truck owner, his case falls under negative list of services and thus, the Appellant is not liable to 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

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

*D.S.B.*  
आयुक्त (अपील)/Commissioner (Appeals)

By R.P.A.D.

वायुवत् बधील  
राजकोट  
आधीक्षक / Superintendent  
कें. व. एवं सेवा च. अपील्स, राजकोट  
CGT Appeals, Rajkot



To, M/s. Habasi Mahmadidrish Abdulraheman, Neshadi Maholla, Jafrabad, Dist. Amreli-365540.	सेवा में, मे. हबसी महमद ईदरिश अब्दुलरहेमान, नेसड़ी महोला, जाफराबाद, जिल्ला: अमरेली पिन: 365540 ।
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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 फ़ाइल।



