



::आयुक्त (अपील) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::  
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE



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

रेस कोर्स रिंग रोड / Race Course Ring Road

राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952/2441142 Email: commrapp13-cexamd@nic.in

रजिस्टर्ड डाक ए.डी.द्वारा

DIN- 20230364SX0000222C22

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	GAPPL/COM/STP/383/2022	BHV-EXCUS-000-JC-PG-006 TO 007-2022-23	23.11.2022

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

**BHV-EXCUS-000-APP-087-2023**

आदेश का दिनांक / Date of Order:	14.03.2023	जारी करने की तारीख / Date of issue:	15.03.2023
------------------------------------	------------	--	------------

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 / गांधीधाम द्वारा उपरोक्त जारी मूल आदेश से नृजित: /  
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. SAMIRKUMAR KIRITKUMAR PATEL TRIVENI ENTERPRISE, NEAR DENA BANK,, LOKHAND BAZAR, BHAVNAGAR,**

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 अपील 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 मूल्यों से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को जाननी 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 अपील न्यायाधिकरण (सेस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- 380016 को जाननी चाहिए। /

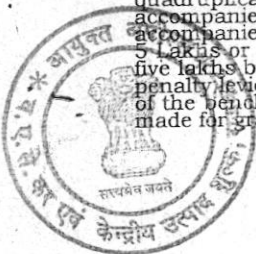
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपील 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 वापस किया 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 अपील न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील न्यायाधिकरण की शाखा स्थित है। स्थान आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

(B) अपील 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 सकेगी एवं उनके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (इनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और वापस किया 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 अपील न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील न्यायाधिकरण की शाखा स्थित है। स्थान 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 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/-.





**:: अपील आदेश / ORDER-IN-APPEAL ::**

Shri Samirkumar Kiritkumar Patel, Bhavnagar (hereinafter referred to as "Appellant") has filed the present Appeal against Order-in-Original No. BHV-EXCUS-000-JC-PG-006 to 007-2022-23 dated 23.11.2022 (hereinafter referred to as 'impugned order') passed by the Joint Commissioner, Central GST, HQ Bhavnagar (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that the Appellant is engaged in business activity of clearing and forwarding agent services, site formation and clearance, excavation, earth moving and demolition services, dredging of rivers, ports harbours, backwaters, estuaries etc., works contract service & supply of tangible goods services and hold Service Tax registration No. ACTPP5864ASD002. The Income Tax Department shared the third party information/ data based on Income Tax Returns/ 26AS for the Financial year 2016-17 of the Appellant. A letter dated 27.08.2020 was issued by the Jurisdictional Range Superintendent requesting the Appellant to provide information/documents for the Financial year 2016-17. However, no reply was received from the Appellant. It was also observed that the Appellant has not filed Service Tax return for the period October-2016 to March-2017.

3. In absence of data/information, two show cause notices dated 20.10.2021 having different file numbers were issued to the Appellant demanding Service Tax and cess to the tune of Rs. 58,26,746/- under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as 'the Act') alongwith interest under Section 75 of the Act. It was also proposed to impose penalties under Section 78, 77(2) and 77(1)(c) of the Act upon the Appellant.

4. The adjudicating authority vide the impugned order confirmed Service Tax demand of Rs. 57,26,746/- under Section 73(1) along with interest under Section 75 of the Act, imposed penalty of Rs. 57,26,746/- under Section 78 of the Act and also imposed penalty of Rs. 10,000/- each under Section 77(2) and 77(1)(c) of the Act. The Adjudicating Authority dropped the entire proceedings initiated by Show Cause Notice No. V/15-32/DEM/HQ/2021-22 dated 20.10.2022 being redundant for same period, amount and for same taxpayer.

5. Being aggrieved, the Appellant has preferred the present appeal on grounds that the Appellant is engaged in the business of mainly providing dredging and clearing & forwarding services in the name & style of Triveni Enterprise holding Service Tax registration No. ACTPP5864ASD002. They have provided mainly dredging services to Nirma Ltd. and also earned machine rent income from Nirma and Patel and commission income. They had disclosed unpaid Service Tax liability aggregating to Rs. 54,92,395/- in schedule 4-statutory



*Shing*

liabilities in balance sheet for year ending 31.03.2017. They had discharged Service Tax liability of Rs. 55,77,704/- after end of the year through challan dated 07.04.2017, 27.06.2017 and on 24.10.2017. The Adjudicating Authority taken value from Form 26AS and determined tax liability of Rs. 57,26,746/- which also includes details of reimbursement of transport expenses and the same is not liable to Service Tax. Their accountant did not furnish Service Tax return of 2<sup>nd</sup> half year ending March, 2017, however, they have discharged and paid Service Tax liability. They are not liable to any penalty as per express provisions of Section 73 of the Act as Service Tax stands paid before issuance of Show Cause Notice.

5.1 The order passed by the Adjudicating Authority is perverse, incuriam and liable to be set aside. The Show Cause Notice issued by invoking extended period of time is time barred. The Adjudicating Authority erred in taxing higher value of services being difference between value as per Form 26AS and as per income tax data tallied with audited annual accounts. The Adjudicating Authority has failed to gather Service Tax payment details from department records before confirming demand of Service Tax. He ought to have appropriated Service Tax paid of Rs. 55,77,704/-. The Adjudicating Authority has not appreciated that there is no suppression of facts, fraud etc. with intent to evade payment of tax by them. They are not liable to any penalty.

6. The matter was posted for hearing on 14/15/16.02.2023 & 21/22/23.02.2023. The Appellant vide letter dated 16.02.2023 (received on 22.02.2023) has submitted a paper book and requested to adjudicate the appeal on the basis of written submission filed with documents.

6.1 In paper book, the submission made by the Appellant is akin to statement of facts and grounds of appeals mentioned in the appeal memorandum. They further submitted that apart from Service Tax of Rs. 55,77,704/- paid during the year 2017, they have also paid Service Tax of Rs. 2,11,107/- during the material period and credit thereof has been given against tax liability in the order by the Adjudicating Authority. They clarified that the excess payment is towards interest for delayed payment of Service Tax.

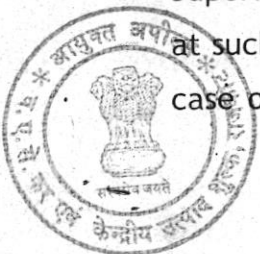
7. I have carefully gone through the case records, impugned order and appeal memorandum filed by the Appellant. The main issue to be decided in the instant case is whether the service provided by the Appellant is taxable under Service Tax or otherwise. On going through the impugned order, it has been held by the Adjudicating Authority that the service provided by the Appellant is a taxable service in absence of information/ documents which were neither submitted by the Appellant nor they had filed any defense submission. The practitioner of the Appellant appeared for personal hearing and undertook to



*Handwritten signature*

Adjudicating Authority and undertook to submit the written submission along with supporting documents on or before 10.11.2022. However, no reply was received from them by the Adjudicating Authority and thus the Adjudicating Authority decided the case in absence of any documentary evidences. The Appellant on the other hand has stated that they had disclosed unpaid Service Tax liability aggregating to Rs. 54,92,395/- in schedule 4-statutory liabilities in balance sheet for year ending 31.03.2017. It is submitted that they had discharged Service Tax liability of Rs. 55,77,704/- after end of the year through various challans dated 07.04.2017, 27.06.2017 and on 24.10.2017. It is also submitted that the Adjudicating Authority taken value from Form 26AS and determined tax liability of Rs. 57,26,746/- which also includes details of reimbursement of transport expenses and the same is not liable to Service Tax. It is stated that their accountant did not furnish Service Tax return of 2<sup>nd</sup> half year ending March, 2017. However, it is not clear that if they had discharged and paid Service Tax liability why it was not produced before the Adjudicating Authority despite sufficient time being given to them. It is not possible to verify authenticity of these challan at appeal stage. The Appellant has also not provided details of taxable values separately for the services of dredging, clearing and forwarding, renting of machinery and commission etc.

8. I find that the Appellant had not submitted the relevant documents/ data to the Adjudicating Authority despite they attended the personal hearing before him. Appellant has come in appeal with new facts that they have shown Service Tax liability under statutory liability in their books of accounts. At the appeal stage also they have not submitted any supporting documents except copy of some pages of annual report which are not authentic in nature. It is on record that at the time of adjudication, the Appellant has failed to submit the documentary evidences in support of their claim and they have repeated the same tactics at the Appeal stage as well. It is undisputed fact that they have not paid Service Tax and also not filed the statutory Service Tax returns though they were registered Service Tax assessee. At appeal stage they have not paid mandatory pre-deposit and have made application for its waiver. These acts on their part are nothing but adoption of a very casual approach in complying with the provisions of Service Tax Act/ Rules and it shows that they are not bothered to fulfil statutory obligations casted upon them by the legislature. The Appellant is working under self-assessment regime and the legislature has put full trust upon every assessee. Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed under the Service Tax Act/ Rules. In the case on hand the Appellant not only failed to pay the Service Tax but also not



*[Handwritten signature]*

filed the statutory Service Tax return as admitted by them. All these material ingredients suggest that the Appellant is not interested in either paying the Service Tax or filing the statutory returns and compel the department to accept their plea in whatever name. Thus, I am not inclined to accept the arguments advanced by them and reject the same being devoid of any merit.

9. In view of the above, I uphold the impugned order and reject 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



(शिव प्रताप सिंह)/(Shiv Pratap Singh),  
14-3-23

आर. एस. बोरीचा / R. S. BORICHA आयुक्त (अपील)/Commissioner (Appeals)  
अधीक्षक / Superintendent

के. व. एवं सेवा कर अपील, राजकोट

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

To,  
Shri Samirkumar Kiritkumar Patel,  
Triveni Enterprise, Lokhand Bazar,  
Bhavnagar.

सेवा में,  
श्री समीरकुमार किरीटकुमार पटेल, त्रिवेणी  
एंटरप्राइस, लोखंड बाजार, भावनगर।

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, भावनगर-1 को आवश्यक कार्यवाही हेतु।
- 5) गार्ड फाइल।

