

- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमबाली, 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 (अपील), केन्द्रीय उत्पाद शुल्क द्वारा 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 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 अपीलों 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, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।
- (i) 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 नियमबाली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगी।
- 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 की पुनरीक्षण याचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद 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 subsection (1) of Section-35B ibid:
- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारबाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारबाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रस्तकरण के दौरान, किसी कारबाने 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 कझे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिवेट) 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 भगतान के लिए जो झट्टी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (सं 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाधित पर या बाद में पारित किए गए है।/ 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) नियमबाली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण 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 O.I.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।
जहां 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 भगतान, उपर्युक्त ढंग से किया जाना चाहिए। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलार्थी 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) यथासंघोषित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I 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) नियमबाली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की 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.
- (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.



✓
Jyoti

The adjudicating authority has erred in confirming demand of Rs. 1,02,452/- under Section 73(1) of the Act, erred in not allowing the benefit of Notification No. 30/2012 dated 20.06.2012, erred in demand of interest u/s 75 of the Act, erred in demanding penalty u/s 77(1)(a), 77(2) and 78 of the Act.

4. The Appellant has preferred the present appeal on 28.12.2022 on various grounds mainly as stated below:

- the Appellant under Section 78 of the Act.
- Section 77(2) of the Act. The penalty of Rs. 1,02,452/- was also imposed upon authority-imposed penalties of Rs. 2,000/- each under Section 77(1)(a) and years along with interest under Section 75 of the Act. The adjudicating demand of Rs. 1,02,452/- under Section 73(1) invoking extended period of 5
3. The adjudicating authority vide the impugned order confirmed Service Tax (1)(c) and Section 78 of the Act.

of the Act, and proposing to impose penalty under Section 77(1)(a), 77(2), 77 of the Act, 1994 (hereinafter referred to as 'the Act') with interest under Section 75 Act, 1994 (hereinafter referred to as 'the Act') with interest under Section 75 Tax of Rs. 1,02,452/-, including all cesses under Section 73(1) of the Finance 23.12.2020 invoking extended period of 5 years proposing to demand Service the Income Tax department and culminated into Show Cause Notice dated and the Service Tax was determined on the basis of data/ details provided by documents from appellant. No reply/ response was received from the appellant as 'the Act'). The jurisdictional Superintendent called for the information/ Service Tax Registration under the Finance Act, 1994 (hereinafter referred to The said data also contained the details of the Appellant who had not obtained rental of movable/ immovable property, Technical or Professional service etc. earned income from providing services like contract, commission or brokerage, 1961 in respect of various persons which depicted that such persons had paid/ credited under Section 194C, 194H, 194I & 194J of the Income Tax Act, Department also provided data of Form 26AS showing details of total amount providing services classified under various service sectors. The Income Tax Returns for financial year 2015-16 declared to have earned income by provided data/ details of various Income Tax payers, who in their Income Tax 2. The facts of the case, in brief, are that the Income Tax Department as adjudicating authority).

Commissioner, Central GST, Division- Surendranagar (hereinafter referred to against Order-in-Original (OIO) No. 102/AC/NIS/SNR/22-23 dated 24.11.2022 Gujarat 363001(hereinafter referred to as "Appellant") has filed present Appeal M/s. Kokilaben Bipinbhai Dagli, 45- Sardar Society, Surendranagar,

:: ORDER-IN-APPEAL ::

:: અપીલ અલગ ::



As such, I hold that demand of service tax is not sustainable under the negative list and is not liable to pay Service Tax in the instant case. providing service by way of transportation of goods by road, being covered 9. Therefore, in view of above, I find that the appellant being person

(iii) by inland waterways; "

(iv) [* * *]

(B) a courier agency;

(A) a goods transportation agency; or

(i) by road except the services of—

(p) services by way of transportation of goods—

(b)

(a)

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

"SECTION 66D. Negative list of services.—

Section of Section 66D of the Act is reproduced under:

them is falling under (p)(i) of Section 66D of the Act, relevant portion of sub 8. Going through the contention of the appellant that service provided by

1,02,452/- with interest and penalties.

appellant as taxable and confirmed the demand of Service Tax of Rs. and thus considering the amount appearing in Income Tax return of the was left with no way but to decide the issue on the basis of available records proper defence reply, submission and supporting documents by the appellant otherwise. Adjudicating Authority in the present case, due to absence of amount reflected in data of Income Tax in respect of appellant is taxable or of the Appellant. The issue to be decided in the present appeal is whether memorandum, written submission and additional submission dated 17.03.2023 I have carefully examined the show cause notice, impugned order, appeal

Therefore, requested to set aside the impugned order and allow the appeal.

Their service, being falling under negative list, service tax is not leviable. under negative list of services at (p)(i) of Section 66D of Finance Act, 1994. road and transportation by road (except Goods Transport Agency) is covered Thus, they had provided the services by way of transportation of goods by the village near by Surendranagar and not issued any consignment notes. that they are having only one truck and carried out transportation of goods to 6. Appellant, vide additional submission dated 17.03.2023, has submitted Order-In-Original and to allow the appeal.

services other than GTA services. Therefore, he requested to set aside the additional submission. He submitted that appellant has provided transport attended by Shri A.N. Shah, consultant (authorised by appellant), handed over 5. Personal hearing in the matter was held on 24.02.2023 which was Appeal No. V2/37/BVR/2023



5) રજી પ્રિયા

- ચોલાફી બેગી
- 4) અભૈન્દુ અલ્લગાંત, અટ તા ફાલ કે તા ફાલ અને ફાલ જાણ, હિન્દુત્વ અનુભવ કુ અલ્લગાંત
ચોલાફી બેગી
- 3) અલ્લગાંત/અલ્લગાંત, અટ તા ફાલ કે તા ફાલ અને ફાલ જાણ, હિન્દુત્વ કુ અલ્લગાંત
અલ્લગાંત ચોલાફી બેગી
- 2) અલ્લગાંત, અટ તા ફાલ કે તા ફાલ અને ફાલ જાણ, હિન્દુત્વ અલ્લગાંત, હિન્દુત્વ કુ
અલ્લગાંત ચોલાફી બેગી
- 1) હિન્દુત્વ અલ્લગાંત, અટ તા ફાલ કે તા ફાલ અને ફાલ જાણ, જાણાન ઘાટ, અન્ધગાંત કુ
અલ્લગાંત :-

To,	M/s. Kokilaben Bipinbhai Dagli,	45 - એકાર હિન્દુત્વ, હિન્દુત્વ, જાનાન 363001	Surendranagar, Gujarat 363001.
અનુભૂતિ,	અનુભૂતિ લખાડી લખાડી	45-Sardar Society,	અનુભૂતિ

BY R.P.A.D. એટિસેટ/ R.S. BORICHA એટિસેટ સુપરિન્ડેન્ડેન્ટ એટિસેટ કેસ્ટ અપેલીસ, રાજકોટ

એટિસેટ/ એટિસેટ એટિસેટ એટિસેટ

એટિસેટ/ એટિસેટ એટિસેટ

Commissioneer (Appeals)

અલ્લગાંત (અલ્લગાંત)

(Shiv Pratap Singh)

(અનુભૂતિ અનુભૂતિ)

અનુભૂતિ / Attested

11. The appeal filed by Appellant is disposed off as above.

11. અનુભૂતિ અનુભૂતિ અનુભૂતિ અનુભૂતિ અનુભૂતિ અનુભૂતિ અનુભૂતિ અનુભૂતિ અનુભૂતિ અનુભૂતિ

allow the appeal filed by the Appellant.

order, dropping the entire demand, interest and all the penalties therein and
10. In view of the above discussions and findings, I set aside the impugned

