



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

द्वितीय तल, जी एम टी भवन / 2nd 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



सत्यमेव जयते

रजिस्टर्ड डाक ए.डी. द्वारा :- DIN-20230764SX0000520745

क अपील / फाइल संख्या /
Appeal / File No. मुलआदेश नं /
OIONo. दिनांक /
Date
GAPPL/COM/STP/635/2023 115/D/2022-23 05-12-2022

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

RAJ-EXCUS-000-APP-171-2023

आदेश का दिनांक / 22.06.2023 जारी करने की तारीख / 19.07.2023
Date of Order: Date of issue:

श्रीशिवप्रतापसिंह, आयुक्त (अपील्स), राजकोटद्वारा 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. Ramesh Shivabhai Moradiya (HUF), 527, Guj. Housing Board, Sanala Road, MorbiGujarat

इस आदेश (अपील) में 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:-

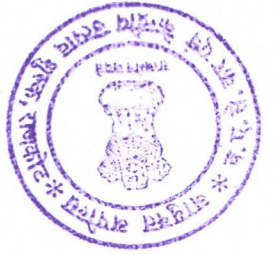
(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामलों में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को की जानी चाहिए।/
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन अमावा अहमदाबाद- 380016 को की जानी चाहिए।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, BhaumaliBhawan, 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 लगाया गया जुर्माना, रूपए 5 लाख या उससे कम, 5 लाख रूपए या 50 लाख रूपए तक अथवा 50 लाख रूपए 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 उम शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रूपए 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 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 नियमवली, 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, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रूपए 5 लाख या उससे कम, 5 लाख रूपए या 50 लाख रूपए तक अथवा 50 लाख रूपए 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 उम शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रूपए 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 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/-.





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

(G) उच्च अधीनस्थ अधिकारी की अपील करने में संबंधित व्यय, लिखन और नवीनतम प्रथाओं के लिए, अधीनस्थ विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं।

(F) Attention is also invited to the rules governing these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

(E) न्यायाधीशों द्वारा उच्च न्यायाधीशों के समक्ष अपील करने के लिए प्रयुक्त होने वाले मुद्रांक, 1982 में वर्णित एवं अन्य संबंधित मामलों की नकल को देख सकते हैं।

(D) The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved is more than Rupees One Lakh or less and Rs. 1000/- where the amount involved is more than Rupees One Lakh or less and Rs. 100/- for each.

(C) 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 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-EB of CEA, 1944, under Major Head of Account.

(B) The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved is more than Rupees One Lakh or less and Rs. 1000/- where the amount involved is more than Rupees One Lakh or less and Rs. 100/- for each.

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अपील आदेश /ORDER-IN-APPEAL

Ramesh Shivabhai Moradiya (HUF), 527, Gujarat Housing Board, Sanala road, Morbi 363 660 (*hereinafter referred to as* appellant) has filed appeal No. GAPL/COM/STP/635/2023 against Order-in-Original No. 115/D/2022-23 dated 05.12.2022 (*hereinafter referred to as* 'impugned order') passed by the Assistant Commissioner, Central GST, Division-I, Morbi (*hereinafter referred to as* 'adjudicating authority').

2. Facts of the case, in brief, are that as per data received from the Income Tax department, the appellant appeared to have received various amounts as consideration for providing taxable service during the period 2015-16 and 2016-17. It appeared that the appellant had not obtained Service tax registration and did not pay service tax. Therefore, a show cause notice dated 11.12.2020 was issued to the appellant demanding service tax of Rs. 5,89,500/- and proposing penalties under Sections 77 and 78 of the Finance Act, 1994. The adjudicating authority, by the impugned order, confirmed the demand of Rs. 5,89,500/- along with interest under Section 75 of the Finance Act 1994 and imposed penalty of Rs. 5,89,500/- under Section 78 of the Finance Act 1994. He also imposed penalties of Rs.10,000/- under Section 77(1)(a), Rs.10,000/- under Section 77(1)(c) and Rs.10,000/- under Section 77(2) of the Finance Act, 1994

3. Being aggrieved, the appellant filed appeals wherein they, *inter alia*, submitted that they were providing service related to transport of goods by road and the liability to pay service tax was on the recipient of service as per Notification No.30/2012-ST. The appellant further submitted that penalty under Section 77 and 78 of the Finance Act, 1994 cannot be imposed.

4.1 Chartered Accountant Ajay Patel appeared for personal hearing held on 19.06.2023 and submitted that appellant provided GTA services which are exempt from Service Tax on R.C.M. basis. Copy of sample consignment notes, Form 26 AS, ITR, Balance sheet and Profit & Loss Account, Ledger etc. are enclosed. He requested to set aside the O.I.O. and to allow the appeal.

5. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and written as well as oral submissions made by the Appellants. The moot question to be decided in the present appeal is whether the appellant is liable to pay service tax on the work carried out by them.

6. The main contentions raised by the appellant in this appeal is that they have not received show cause notice and that they had provided GTA and the



Ajay Patel

liability to pay service tax was on the recipient of service as per Notification No.30/2012-ST.

7. As per the profit and loss account, Income ledger, 26 AS, sample copy of consignment note etc., I observe, the appellant had earned income from Transportation of goods. I find that the liability to pay service tax under the category of Transport of goods by road by a Goods Transport Agency is on the service receiver vide Notification No.30/2012, entry No. B(ii)(2). As per the evidences produced before me, the appellant has provided Transportation of Goods by road to Body Corporate and to a partnership firms. Thus, the liability to pay service tax has been shifted to the recipient of service as per Notification No.30/2012. As such, the demand of service tax from the appellant is not sustainable on merits.

8. In view of the above, I set aside the impugned order and allow the appeal.

9. अधीनकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

9. The appeal filed by the Appellant is disposed off as above.

बताया / Attested

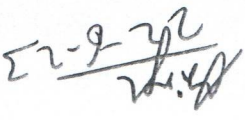


श्री. बी.एस. राना / B. S. RANA

अधीनकार / Superintendent

श्री. ए.ए. प्रताप सिंह / राजकोट, राजकोट

शिव प्रताप सिंह / SHIV PRATAP SINGH
आयुक्त (अधीन) / Commissioner (Appeals)



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

भेजा है, रघु शिवभाई मोरदिया (एचयूएफ), 527, गुजरात हाउसिंग बोर्ड, Sanala road, Morbi 363 660	भेजा है, रघु शिवभाई मोरदिया (एचयूएफ), 527, गुजरात हाउसिंग बोर्ड, Sanala road, Morbi 363 660
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प्रतिनिधि :-

- 1) मुख्य आयुक्त, वस्ति एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद
- 2) प्रधान आयुक्त, वस्ति एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट
- 3) सहायक आयुक्त, वस्ति एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क मण्डल-1, मोरबी
- 4) गाई फाइल।

