



:: 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



सत्यमेव जयते

Tele Fax No. 0281 - 2477952/2441142 Email: commrappl3-cexamd@nic.in

रजिस्टर्ड डाक ए.डी. द्वारा :-

DIN- 20230764SX0000217692

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश नं. OIONo	दिनांक / Date
	V2/63/RAJ/2022	15/ADC/BP/Sub-Commr/2021-22	17-01-2022

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

RAJ-EXCUS-000-APP-173-2023

आदेश का दिनांक / Date of Order:	22.06.2023	जारी करने की तारीख / Date of issue:	20.07.2023
------------------------------------	-------------------	--	-------------------

श्रीशिवप्रतापसिंह, आयुक्त (अपील्स), राजकोटद्वारा पारित /

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

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ महायुक्त आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर,
राजकोट / जामनगर / गांधीधामा द्वारा उपरलिखित जारी मूल आदेश से मूजित: /

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. Kiran Jayendra Thakar, O, Sachora Street, Nagar Chaklow, Jamnagar

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 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 बताया गए अपीलों के अलावा शेष सभी अपीलों में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (मिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन अमरवा 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 गए 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, रुपय 5 लाख या उससे कम, 5 लाख रुपय या 50 लाख रुपय तक अथवा 50 लाख रुपय 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 महायुक्त 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/- रुपय 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 नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती एवं उमके 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, रुपय 5 लाख या उससे कम, 5 लाख रुपय या 50 लाख रुपय तक अथवा 50 लाख रुपय 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 महायुक्त 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/- रुपय 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 five lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than 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

Kiran Jayendra Thakar, Sachora Street, Nagar Chaklow, Jamnagar (*hereinafter referred to as appellant*) has filed appeal No. V2/63/RAJ/2022 against Order-in-Original No.15/ADC/BP/Sub-Commr/2021-22 dated 17.01.2022 (*hereinafter referred to as 'impugned order'*) passed by the Additional Commissioner, Central GST, Sub-Commissionerate, Jamnagar (*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 2014-15 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 28.09.2020 was issued to the appellant demanding service tax of Rs.72,10,081/- 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.72,10,081/- along with interest under Section 75 of the Finance Act 1994 and imposed penalty of Rs.72,10,081/- 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 show cause notice was issued by presuming that income received was in lieu of taxable service provided without pinpointing any service. The adjudicating authority has confirmed the demand on the ground that the appellant has not shown ownership of vehicles ad payment of service tax by GTA without holding that CA certificate is factually incorrect or otherwise unacceptable. Moreover, the reasoning advanced by adjudicating authority to demand service tax does not constitute any conditions under Sl. No. 22(b) of Notification No.25/2012-ST.

3.1 The appellant submitted that the observations made by adjudicating authority are in the nature of a probe which ought to have been carried out prior to issue of show cause notice. They contended that the impugned order is in the nature of an addendum to show cause notice which continue to extrapolate the assumptions made in the show cause notice without holding the certificate issued by Chartered Accountant and other invoices, lorry receipt



[Handwritten signature]

3.2 The appellant further contended that the adjudicating authority has ignored the decision in the case of *Deltax Enterprise-2018 (10) GST.392 (Tr-Del)* wherein it is held that application of Section 72 of Finance Act, 1994 cannot be applied to income tax return without identifying the specific taxable service or service recipient. The appellant also submitted that adjudicating authority has erred in following the decision of *Simplex Infrastructure Ltd-2016 (42) STR.634 (Cal)*.

4.1 Shri Vikas Mehta, consultant appeared for personal hearing on 10.03.2023 and submitted that the appellant is a transporter/ person who provided trucks/ vehicles to GTA who issued consignment notes. He argued that the service provided by the appellant falls under negative list/ exempted category. He sought 15 days' time to make further additional submissions with supporting documents. He requested to set aside the impugned order and to allow the appeal.

4.2 Appellant vide further submission dated 22.06.2023 submitted that during the F.Y. 2014-15 and 2016-17, they had received Rs. 25,01,098/- and Rs. 20,58,751/- respectively in lieu of providing transportation of goods by road (without issuing consignment note) which is covered under Section 66 D (p) (i) of Finance Act, 1994. In support, they have submitted the certificate dated 21.06.2023 issued by Chartered Accountant M/s. Balchandra D. Rathod, Jamnagar. Appellant further submits that owing to communication gap with their erstwhile accountant, the aforesaid receipt was inadvertently claimed as reimbursement by them which may please be ignored in view of the correct position reflected in the books of account as well as certificate issued by Chartered Accountant. The mention of transportation income during the F.Y. 2014-15 and F.Y. 2016-17 in the profit & loss account respectively clearly establishes that they have earned the income from the activity of transportation of goods.

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 liability to pay service tax was on the recipient of service as per Notification No.30/2012-ST. The appellant further submitted that they have submitted reply to the show cause notice on 20.05.2022, but the order has been passed without considering the reply.



7. I find that the impugned order has been passed ex-parte, while the documents produced by the appellant suggested that the appellant had replied to the department and those letters were received in the office of Deputy/Assistant Commissioner, CGST, Division, Jamnagar-I on 20.09.2021 and 20.05.2022. However, the adjudicating authority has confirmed the demand without mentioning the reply submitted by the appellant. I also find that neither the show cause notice nor the impugned order identified the nature of service provided by the appellant which is essential for determining the tax liability. Therefore, the impugned order is not sustainable on this ground alone.

8. As per the profit and loss account, I observe, the appellant had earned income from Transportation of goods and vehicle hire income. 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. Further, as per entry No. 22(b) of Notification No.25/2012-ST, services by way of giving vehicle on hire to a goods transport agency was exempt from service tax. As such, the demand of service tax from the appellant is not sustainable on merits.

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

१०. अपीलकरता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीकेसे किया जाता है।

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

सत्यापित / Attested

Seeyem

22-6-23

के. जी. सावलाणी / K. G. SAVLANI
अधीक्षक / Superintendent

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

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

सेवा में किरण जयेंद्र ठाकर, सचोरा स्ट्रीट, नगर चाकलो, जामनगर	To Kiran Jayendra Thakar, Sachora Street, Nagar Chaklow, Jamnagar
--	---

प्रतिलिपि :-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद
- 2) प्रधान आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट
- 3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क मण्डल, जामनगर -I
- 4) मॉडर फाइल।





1950
1951
1952
1953
1954
1955
1956
1957
1958
1959
1960