

रजिस्टर्ड डाक ए.डी. द्वारा

: आयुक्त (अपील-I) का कार्यालय केन्द्रीय उत्पाद शुल्क :  
सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास,  
आंबावाडी, अहमदाबाद- 380015.

क फाइल संख्या : File No : V2(GTA)31/STC-III/2016/Appeal-I / 640-645  
ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-252-16-17  
दिनांक Date 23.02.2017 जारी करने की तारीख Date of Issue \_\_\_\_\_

श्री उमाशंकर, आयुक्त (अपील-I) केन्द्रीय उत्पाद शुल्क अहमदाबाद द्वारा पारित

Passed by Shri Uma Shankar Commissioner (Appeals-I) Central Excise  
Ahmedabad

ग \_\_\_\_\_ आयुक्त केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश सं \_\_\_\_\_  
दिनांक : \_\_\_\_\_ से सृजित

Arising out of Order-in-Original No AHM-STX-003-ADC-MS-068-15-16 dated 14.03.2016 Issued by:  
Additional Commissioner, Central Excise, Din: Gandhinagar, A'bad-III.

घ अपीलकर्ता / प्रतिवादी का नाम एवं पता Name & Address of The Appellants/Respondents

**M/s. Fourtune Builders**

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-  
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the  
following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-  
Appeal to Customs Central Excise And Service Tax Appellate Tribunal :-

वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ.20, न्यू मैन्टल हास्पिटल  
कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20,  
Meghani Nagar, New Mental Hospital Compound, Ahmedabad - 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील  
सेवाकर नियमावली, 1994 के नियम 9(1)के अंतर्गत निर्धारित फार्म एस.टी- 5 में चार-प्रतियों में की जा  
सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए  
(उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित  
सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की  
मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी  
होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए  
5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या  
उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी।

(ii) 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 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.



(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धारा (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क/ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (उसमें से प्रमाणित प्रति होगी) और आयुक्त/सहायक आयुक्त अथवा उप आयुक्त, केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए सीमा एवं केन्द्रीय उत्पाद शुल्क बोर्ड/ आयुक्त, केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रति भेजनी होगी।

(iii) The appeal under sub section and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 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 Central Board of Excise & Customs / Commissioner or Dy. Commissioner of Central Excise to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjuration authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. 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.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 35F के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 25) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।

4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, 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 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

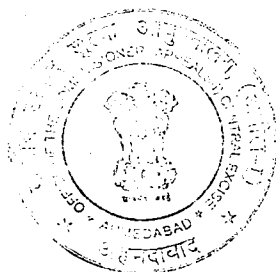
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.

(4)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(4)(i) In view of above, 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."



ORDER-IN-APPEAL

M/s Fortune Builders, 2<sup>nd</sup> floor, 'F' Fortune Empire, Borisana Road, Opp. Kashiram Party Plot, Kalol, Gandhinagar Dist. (Gujarat) [hereinafter referred to as 'the appellant'] has filed this appeal against Order-in-Original No.AHM-STX-003-ADC-MS-068-15-16 dated 14.03.2016 [hereinafter referred to as 'the impugned order'] passed by the Additional Commissioner of Central Excise, Ahmedabad-III [hereinafter referred to as 'the adjudicating authority'].

2. Briefly stated, the facts of the case is that the appellant is engaged in construction of roads and having Service Tax Registration as a provider of Works Contract service and as a recipient of Transport of Goods by Road/Goods Transport Agency Service. A show cause notice dated 25.02.2015 was issued to them for demanding service tax amounting to Rs.23,89,691/- with interest for the period from January 2013 to December 2014 for non -payment of service tax as a recipient of Goods Transport Agency . The said show cause notice also proposes for imposition of penalty under Section 76, 77 and 78 of Finance Act, 1994 and also under Rule 7 C of Service Tax Rules, 1994. Vide the impugned order, the demand was confirmed with interest and also imposed penalty of Rs.10,000/- under Section 77(1)(a) and equal to service tax amount involved under section 78 of Finance Act, 1994 and Rs.10,000/- under Rule 7 C of Service Tax Rules, 1994.

3. Being aggrieved, the appellant has filed the present appeal on the grounds that the bills on the basis of which the demand was raised are in the nature of supply of consumable materials and no ingredient of transportation is involved, thus no service tax is payable; that for classification under the coverage of transportation service condition viz [i] there should be transaction for the transportation of goods and such service has been provided by the agency; [ii] goods are in receipt under the cover of consignment notes; [iii] there are to be a declaration regarding the service tax payable by consignor and [iv] payment must be of transportation charges and not on materials; that the adjudicating authority has wrongly concluded that the transporters raising bills for supply of material (showing service tax paid by consignee, indicating service invoice) is a total falsity with a intention to avoid the liability service tax ; that for the purpose of levy of service tax under goods transport agency, individual transporter are not covered under notification No.35/2004-ST dated 31.12.2004. The appellant has cited various citations in support of their argument that the service recipients were not liable for service tax on service availed from the individual or truck owners. They further submitted that no extended period is invocable and no penalties are imposable in their case.

4. A personal hearing in the matter was held on 24.01.2017 and Ms Rachana M Khandhar, Chartered Accountant appeared for the same. She explained that the liability has been discharged by the individual transporter and requested time for submitting details of bill raised by the transporter. Accordingly, she submitted bills wise details on 02.02.2017.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum as well as details submitted later on. The limited point to be decided in the instant case is whether as a recipient of Goods Transport Agency service, the demand of Rs.23,89,691/- confirmed in the impugned order against the appellant is correct or otherwise.

6. At the outset, I observe that there is, however, no dispute regarding classification of service availed, but disputed value involved in receipt of service during the relevant period. It is the contention of the adjudicating authority that the transportation expenses of Rs.7.73 crores incurred by the appellant during the relevant period in respect of receipt of goods and material is taxable under the category of "Goods Transport Agency Service" in terms of sub-clause (zzp) of Clause (105) of Section 65 of the Finance Act, 1994. On the other hand, the appellant contended that the bills of Rs.6.66 crores are in the nature of supply of consumable materials and no ingredient of transportation is involved; that the bills of Rs.0.81 crores are pertaining to transportation expenses of individual transportation and no service tax is payable against these amounts.

7. I observe that Section 65(105)(zzp) of the Act, *ibid*, defines taxable service under "Goods Transport Agency, as follows:

*"taxable service means" any service provided or to be provided to any person, by a goods transport agency, in relation to transport of goods by road in a goods carriage;*

Section 65(50b) of the Finance Act, 1994 defines Goods Transport Agency Service, as follows:

*"Goods Transport Agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called."*

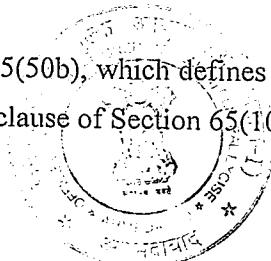
The explanation regarding consignment note mentioned under Rule 4B of Service Tax Rules, 2004 is reproduced as follows:

*'4B Issue of consignment note. - Any goods transport agency which provides service in relation to transport of goods by road in a goods carriage shall issue a consignment note to the customer:*

*Provided that where any taxable service in relation to transport of goods by road in a goods carriage is wholly exempted under section 93 of the Act, the goods transport agency shall not be required to issue the consignment note.*

*Explanation - For the purposes of this rule and the second proviso to rule 4A, "consignment note" means a document, issued by a goods transport agency against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains the name of the consignor and consignee, registration number of the goods carriage in which the goods are transported, details of the goods transported, details of the place of origin and destination, person liable for paying service tax whether consignor, consignee or the goods transport agency.'*

In view of above, to fall within the statute viz. Section 65(50b), which defines the "Good Transport Agency" and taxability on such service under clause of Section 65(105)(zzp) of



*[Handwritten signature]*

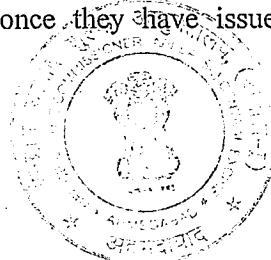
the Act *ibid*, there should be a service, by any person, in relation to transport of goods by road coupled with issue of consignment notes. As per the above referred definition of consignment note, it should be issued by a goods transport agency against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered; and it should contain the name of the consignor and consignee, details of vehicle registration, goods transported, place of origin and destination and details regarding payment of service tax. Further, it has been made mandatory for every GTA to issue consignment note to the receiver of service under the said rule. Generally, when a person deposits the goods with any transporter for the purpose of transport to a given destination, the transporter issues the lorry receipt or consignment note to the person depositing the goods. The name of the consignee is mentioned on such note. The original copy of the lorry receipt is sent by the person depositing the goods i.e. consignor to the consignee to enable him to collect the goods from the transporter.

8. In the instant case, as is stated, the appellant was receiving service as a recipient of goods or materials from transporter. The disputed fact is that the bills raised in the instant case is in the nature of supply of materials and received from individual truck owners, therefore, no service tax is payable on value of such materials received. The appellant contended that classification of transportation service fulfils when such service covers following conditions:

- [i] there should be transaction for the transportation of goods and such service has been provided by the agency;
- [ii] goods are in receipt under the cover of consignment notes;
- [iii] there are to be a declaration regarding the service tax payable by consignor; and
- [iv] payment must be of transportation charges and not on materials

Before dwelling the issue regarding taxable on the value of materials supplied and from individual truck owners, I would like to discuss the issue mentioned at [i] to [iv] above.

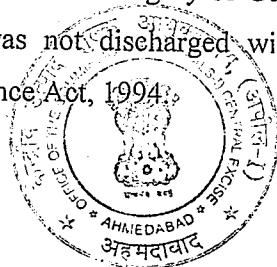
9. The appellant has submitted copy of bills under which the materials/goods were transported. On perusal of such bills, I observe that all the bills are serially numbered and contain the name of the consignor and consignee, goods transported, place of origin and destination. Further, most of the bills also show as 'service tax paid by the consignee'. In certain bills nothing was mentioned regarding payment of service tax. From the bills furnished by the appellant, I am of the considered view that the conditions mentioned at [i] to [iii] is followed by the transporter in the instant case. Further, I am of the view that the condition should not be very strictly construed so far it relates to issue of consignment note and declaration regarding payment of service tax. Non existence of a consignment note can be no excuse for non payment of service tax. The transporters are bound to issue consignment note or bill or challan and once they have issued any kind of such documents, liability towards tax is attracted.



10. Now, I take the issue regarding the argument that no tax is payable for the bills amounting to Rs. 6.66 crores and Rs.0.81 crores, as they are in the nature of supply of consumable materials and no ingredient of transportation is involved and materials are received from individual truck owners respectively. In other words payment must be of transportation charges and not on materials as mentioned at [iv] above. On perusal of bills of transporter, I observe that the said bills were raised for carting of materials and charged carting cost of materials per its weight. The argument of the appellant that the bills are in the nature of costing of materials is, thus, totally baseless and incorrect. Further, if the argument of the appellant is true, they could have been in a position to produce the documents viz. books and accounts which show the details of purchase of materials, tallying the amount in question. However, the appellant has not furnished any such documentary evidence either before the adjudicating authority or before the appellate authority, though the onus to prove such incidence lies with them. I further observed that in case of certain bills, the transporter has paid the service tax on such carting cost. In view of the above discussion, I observe that such transporter has correctly discharged the tax liability by accepting the liability.

11. The other argument of the appellant is that they had received such services valued at Rs.0.81 crores from individual truck owners and hence not taxable on such value. They also relied on the decision of Hon'ble High Court of Madras in the case of M/s KMB Granites Pvt Ltd [2013 (32) STR J 205]. Looking into the facts of the instant case, the value in question is taxable as the service has been provided by a person in relation to transport of goods in a goods carriage under a cover of requisite bills for a consideration. The case laws cited by the appellant are relating to transportation of his own goods manufactured. In a situation wherein the seller has his own fleet of vehicles which are used for transportation of materials sold or bought, no tax is leviable since the service is provided to self and not to the customer. In the instant case, service tax is leviable since the transporter has raised the bills on carting cost of materials supplied for his consideration; therefore, the case law is not applicable to the present case. Further, it is to mention here that in a case where the seller of goods also collects freight charges from the buyer, in view of the reverse charge mechanism, the buyer is required to pay service tax and the seller is not liable for payment of service tax even if he transports the goods in his own vehicle. I rely on the decision in the case of MSPL Ltd -2009 (13) STR 554-Tri; and Sigid India Ltd-2010(19) STR 747-Tri.

12. In view of the above discussion, I do not find any merit to interfere with the order passed by the adjudicating authority and the same is upheld. In the circumstances, the appellant is liable for payment of service tax for the disputed period under the category of Goods Transport Agency Service as discussed above. As duty was not discharged within the stipulated time, interest is payable under section 75 of the Finance Act, 1994.



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13. I find that the adjudicating authority has imposed penalty under Section 77(2) and 78 of the Finance Act, 1994 and under Rule 7C of Service Rule 1994. The penalties imposed under the said Sections appear to be apt in the light of the circumstances of the case.

14. In this backdrop, I reject the appeal filed by the appellant and uphold the impugned order passed by the adjudicating authority. The appeal stands disposed of accordingly.

*Umasankar*

(उमा शंकर)

आयुक्त (अपील्स - I)

Date : 23.02.2017

Attested

*Mohanan V.V*  
(Mohanan V.V)  
Superintendent (Appeals-I)  
Central Excise, Ahmedabad

By R.P.A.D

To

M/s Fortune Builders, 2<sup>nd</sup> floor,  
'F' Fortune Empire, Borisana Road,  
Opp. Kashiram Party Plot, Kalol, Gandhinagar Dist. (Gujarat)



Copy to:-

1. The Chief Commissioner, Central Excise, Ahmedabad Zone .
2. The Commissioner, Central Excise, Ahmedabad-III
3. The Addl. Commissioner, Central Excise, Ahmedabad-III
4. The Deputy/Assistant Commissioner, Service Tax division, Gandhinagar.
5. The Assistant Commissioner, System-Ahmedabad -III
- ✓ 6. Guard File.
7. P.A. File.

