आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ीअहमदाबाद३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065 - टेलेफैक्स07926305136

DIN : 20220264SW000000B222

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1506/2021/6139 – 43

ख अपील आदेश संख्या Order-In-Appeal Nos.**AHM-EXCUS-003-APP-100/2021-22**
दिनाँक Date : **10-02-2022** जारी करने की तारीख Date of Issue 14.02.2022

आयुक्त (अपील) द्वारापारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **44/AC/MEH/CGST/20-21** दिनाँक: **17.02.2021** issued by Assistant Commissioner, CGST& Central Excise, Division Mehsana, Gandhinagar Commissionerate

घ अपीलकर्ता का नाम एवं पताName & Address of the **Appellant / ~~Respondent~~**

M/s Navmeet Cargo Pvt Ltd
5, Mangaldeep Complex,
Nr. Mahesh Petrol Pump,
Visnagar-Mehsana Road,
Visnagar-384315

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का **पुनरीक्षण आवेदन** :

Revision application to Government of India:

(i) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार मे हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur 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.

(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) 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 and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतरमूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए।उसके साथ खाता इ.का मुख्य शीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी 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 OIO 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम होतो रूपये 200/–फीस भुगतान की जाए और जहाँ संलग्नरकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद–380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor,BahumaliBhawan,Asarwa,Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.

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.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / 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 Asstt. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होत हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू.6.50 पैसे कान्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(9) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(Demand) एवं दंड(Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇨ **यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है.**

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:
(x) amount determined under Section 11 D;
(xi) amount of erroneous Cenvat Credit taken;
(xii) amount payable under Rule 6 of the Cenvat Credit Rules.

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।

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

The present appeal has been filed by M/s. Navmeet Cargo Private Limited, 5, Mangaldeep Complex, Near Mahesh Petrol Pump, Visnagar-Mehsana Road, Visnagar – 384 315 (hereinafter referred to as the appellant) against Order in Original No. 44/AC/MEH/CGST/20-21 dated 17-02-2021 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Division : Mehsana, Commissionerate : Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant are holding Service Tax Registration No. AACCN0774HST001 and are engaged in providing taxable services namely Transportation of Goods by Rail, GTA and Supply of Tangible Goods service. During the audit of the records of the appellant for the period from April, 2014 to June, 2017 by the officers of Central GST, Audit, Ahmedabad it was noticed that there was a difference in the income shown by the appellant in their financial records and that shown in their ST-3 returns. The appellant was paying service tax on Transportation of Goods by Rail and GTA services by availing benefit of 70% abatement in terms of Notification No. 26/2012-ST dated 20.06.2012. However, the appellant was collecting service tax at full rate (without abatement) for providing supply of tangible goods by way of providing Autos for hiring. The appellant was also availing the exemption under Notification No. 25/2012-ST dated 20.06.2012 for invoices amounting to less than Rs.750/- as well as for services provided for transportation of agricultural produce. Reconciliation of the financial records of the appellant with returns filed by them revealed that the appellant had not disclosed to the department that they had provided taxable services for which income was earned by them. The appellant was alleged to have accordingly short paid service tax amounting to Rs.16,79,731/- which was liable to be recovered from them.

3. It was also noticed that the appellant had availed and utilized cenvat credit of input service on service tax paid for transportation of

goods by rail on the basis of money receipts issued by the Railways. However, it appeared that cenvat credit of service tax paid on goods transportation by raid has been disallowed for the period F.Y. 2015-16 in terms of Notification No.26/2012-ST dated 20.06.2012 as amended by Notification No. 08/2015-ST dated 01.03.2015. As per the said notification, the abatement is subject to the condition that no cenvat credit has been availed on inputs, capital goods and input services used for providing the taxable service. It appeared that the appellant had wrongly availed cenvat credit of Rs.12,57,904/- on this count.

2.2 It was further observed that the appellant had paid rent to their Director and the said rent was taxable under reverse charge as per Sr.No.5(A) of Notification No.30/2012-ST dated 20.06.2012. However, the appellant failed to pay the service tax amounting to Rs.70,325/-.

2.3 It was also noticed in the course of the audit that the appellant had not filed service tax returns for the period F.Y. 2016-17 and F.Y. 2017-18 (April to June). The appellant had paid the service tax for the said period but they had not paid the interest on delayed payment of service tax. The total interest payable by the appellant amounted to Rs.4,90,021/-.

3. The appellant was issued a Show Cause Notice bearing No. VI/1(b)-130/Navmeet Cargo/18-19/AP-61 dated 17.10.2019 seeking to recover the service tax amounting to Rs.16,79,731/- + Rs.70,325/- under the proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994. It was also proposed to recover the cenvat credit amounting to Rs.12,57,904/- under the proviso to Section 73 (1) of the Finance Act, 1994 read with Rule 14 (1) (ii) of the CCR, 2004 along with interest. Interest amounting to Rs.4,90,021/- on delayed payment of service tax was also sought to be recovered. Imposition of Penalty was also proposed under Section 78 (1) of the Finance Act, 1994 read with Rule 15 (3) of the CCR, 2004.

4. The said SCN was adjudicated vide the impugned order and the demand for service tax was confirmed along with interest. The interest on delayed payment of service tax was also ordered to be recovered. Penalty was also imposed under Section 78 (1) of the Finance Act, 1994 read with Rule 15 (3) of the CCR, 2004.

5. Being aggrieved with the impugned order, the appellant has filed the instant appeal on the following grounds :

i. As per Section 67 (1) (i) of the Finance Act, 1994 where services are provided for consideration in money then the gross amount charged should be considered as value of taxable services. As per the explanation, the consideration is defined as the amount that is payable for the taxable services. In the instant case discount is also offered to customers on the value of invoices and as per Section 67 read with the definition of gross amount charged, the taxable value for services provided shall be the value after discount.

ii. In the calculation of taxable amount shown in the SCN the discount given by them to the customers has not been deducted which leads to demand of service tax on the portion of discount also. The submit the details of the discount given by them to their customers. The service tax payable by them after deducting the discount is Rs.8,90,435/-, which they agree to pay.

iii. The fact that service tax is not payable on the amount of discount can also be referred from the judgment of the Hon'ble Tribunal, Bangalore in the case of Mudra Communications.

iv. Regarding availment of cenvat credit of Rs.12,57,904/-, it is submitted that as per Notification No.26/2012-ST dated 20.06.2012, there is restriction on availing cenvat credit on inputs and capital goods. However, they have claimed cenvat credit on input services and not claimed any cenvat pertaining to inputs and capital goods.

v. Regarding service tax on RCM for the rent paid to the Director, it is submitted that the rent paid to the director is in the capacity of landlord and not director. The office given on rent is personal

property of the director and the company has entered into agreement with the director in capacity of landlord and tenant. The issue is no more res integra as the same was examined by the office of the Chief Commissioner of Central Excise and Service Tax, Ahmedabad at an open house held on 22.09.2014 where it was clarified that reverse charge in the case of director would apply only if service is rendered in capacity of director to the company. But if the director provides his personal property on rent or provides management consultancy to the company, he himself will be liable to pay service tax as the service is provided in his personal capacity.

vi. They rely upon the judgment of the Chennai Tribunal in the case of Integra Software Services Pvt Ltd. They also rely upon the OIA No. AHM-EXCUS-003-APP-0257-17-18 dated 23.03.2018 passed by the Commissioner (Appeals), Ahmedabad in the case of Jay Pumps Pvt Ltd.

vii. Regarding interest on delayed payment of service tax, they admit the liability and agree to pay the same.

viii. Penalty under Section 78 can be levied only if there is fraud, collusion, willful mis-statement, suppression of fats or contravention of any provisions with intent to evade payment of service tax and can be imposed only by invoking the larger period of limitation.

ix. No penalty shall be imposable for any failure referred to in the said provisions if the appellant proves that there was reasonable cause for the said failure.

x. They rely upon the judgment in the case of : CCE, Meerut-II vs. On Dot Couriers & Cargo Ltd – 2006 (6) STJ 337 (CESTAT, New Delhi); Municipal Corporation of Delhi vs. Jagannath Ashok Kumar – (1987) AIR 2316 (Supreme Court); Commissioner of Wealth Tax Vs. Jagdish Prasad Choudhary – (1996) AIR 58 (Patna); Gujarat Water Supply & Sewerage Board Vs. Unique Erectors (Gujarat) Pvt Ltd – (1989) AIR 973 (Supreme Court); Ram Krishna Travels Pvt Vs. CCE, Vadodara – 2007-TMI-977 –CESTAT; Commissioner of Central Excise & Customs, Patna Vs. Advantage Media Consultant & Anr. 2008 (10) TMI 570 (SC); Commissioner of Service Tax, Mumbai-I Vs. Allied

Aviation Ltd – 2017 (4) TMI 438 (CESTAT, Mumbai); Commissioner of Central Excise, Delhi Vs. Maruti Udyog Ltd – 2012 (141) ELT 3 (SC).

xi. They have not collected service tax from the customers and hence the amount received by them should be treated as inclusive of tax.

6. Personal Hearing in the case was held on 28.12.2021 through virtual mode. Ms. Bhagyashree Dave, Chartered Accountant, appeared on behalf of the appellant for the hearing. She reiterated the submissions made in appeal memorandum.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the submissions made at the time of personal hearing as well as material available on records. The issues before me for decision are :

I) Whether the appellant had short paid service tax on Transportation of goods by Rail and GTA service ?

II) Whether the appellant had wrongly availed cenvat credit in respect of the service tax paid on transportation of goods by rail ?

III) Whether the appellant was liable to pay service tax on the rent paid to their Director?

I find that the impugned order also ordered recovery of interest on delayed payment of service tax by the appellant. However, the appellant have accepted the liability and are not contesting this issue. Hence, this issue is held to be proved as uncontested.

7.1 As regards the issue, whether the appellant had short paid service tax on transportation of goods by Rail and GTA service, I find that though there is an elaborate tabulation of details, reflecting the difference in the taxable income declared by the appellant in their returns and that in their financial records, in the SCN or in the impugned order, there is no explanation forthcoming for the said difference. The appellant have in

their submission before the adjudicating authority contended that the difference in the taxable income is on account of the discount offered by them to their customers. However, the adjudicating authority has rejected the contention of the appellant on the grounds that the appellant had not submitted any details of the nature of the discount offered and neither had they submitted any documentary evidence in support of their submission. In their appeal memorandum, the appellant have contended that in terms of Section 67 (1) (i) of the Finance Act, 1994. the taxable value of services is the value after allowing deduction of the discount given to the customers. The appellant have relied upon the judgment of the Hon'ble Tribunal, Bangalore in the case of Mudra Communications, wherein it was held that service tax is not chargeable on the amount of discount. The appellant have admitted their liability to pay service tax amounting to Rs.8,90,435/- as against the demanded service tax amounting to Rs.16,79,731/-.

7.2 It is observed that the issue whether the difference in the taxable income is on account of discount offered by the appellant to their customers can only be determined after verification of the details and documents. It is also required to be verified whether the discount, as claimed by the appellant, are eligible deductions from the gross amount charged by them from their customers. The appellant have, while filing the appeal, not submitted any details or documents supporting their contention regarding the difference being on account of the discount offered by them to their customers. Therefore, I am of the view that the matter is required to be remanded back to the adjudicating authority for fresh decision. The appellant is directed to submit before the adjudicating authority within 15 days of the receipt of this order all the details and documents in support of their contention regarding discounts offered to their customers. The adjudicating authority shall adjudicate the case after considering the submissions of the appellant and by following the principles of natural justice. The demand to this extent is set aside and the appeal is allowed by way of remand.

8. As regards the issue, whether the appellant had wrongly availed cenvat credit in respect of the service tax paid on transportation of goods by rail, I find that the cenvat credit is sought to be disallowed and recovered on the grounds that Notification No. 26/2012-ST dated 20.06.2012 as amended by Notification No. 08/2015-ST dated 01.03.2015 disallowed cenvat credit of the service tax paid on transportation of goods by rail. I find that the said notification provides for exemption from payment of service tax in excess of that calculated on a value which is equivalent to the specified percentage. The relevant entry of the said Notification No. 26/2012-ST dated 20.06.2012 is reproduced as under :

Sl.No.	Description of taxable service	Percentage	Condition
(1)	(2)	(3)	(4)
2	Transport of goods by rail (other than service specified at Sl.No.2A below)	30	CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.

From the above it is clear that the service tax payable on transport of goods by rail is on an abated value of 30%, indicating thereby that service tax on 70% of the taxable value is exempted by virtue of the said notification. However, the exemption is subject to the condition that cenvat credit on inputs and capital goods used for providing the taxable service has not been taken under the provisions of the CCR, 2004.

8.1 It is the contention of the department that in terms of the said notification, Cenvat credit is disallowed in respect of the service tax paid on transport of goods by rail. I am of the view that this is an erroneous interpretation of the provision of the said notification. The notification does not in any way provide for disallowing of cenvat credit. The only correct interpretation of the said notification is that the exemption is subject to the condition of cenvat credit not being availed. Any violation of this condition of the said notification would result in disallowing the benefit of exemption under the said notification. It is open to any assessee to either avail the exemption under the said notification by complying with the conditions, or choose not to avail exemption and pay the full applicable

service tax by availing cenvat credit. If the department was of the view that the appellant had violated the conditions of the exemption notification by availing cenvat credit, they ought to have taken necessary steps to deny the benefit of exemption and recover the applicable service tax. However, the condition of the notification for availing exemption cannot be applied to disallow, deny and recover the cenvat credit. In the consequence, I am of the considered view that the impugned order disallowing and ordering recovery of the cenvat credit is not legally tenable and is, therefore, set aside.

9. As regards the issue of non payment of service tax on rent paid to the Director under reverse charge, I find that the issue has already been decided by this authority in a number of cases. In a recent case of Grace Castings Limited the issue was decided vide OIA No.AHM-EXCUS-003-APP-74/2021-22 dated 14.12.2021. The relevant part of the said OIA is reproduced as under :

> "8. It is observed from the case records that the appellant has paid an amount of Rs.8,10,000/- during the relevant period as rent to the Director of their firm for renting to company the property owned by the Director. The department has sought to charge these expenditures as services under Section 65B(44) of the Finance Act, 1994 by contending that the Director, being owner of property, has become service provider and the appellant has become service recipient. As the appellant firm is a body corporate, they become liable to pay service tax in respect of such services under reverse charge mechanism under Rule 2(1)(d) (EE) of the Service Tax Rules, 1994 read with Notification No.30/2012-ST dated 20.06.2012 as amended by Notification No.45/2012-ST dated 07.08.2012 .
>
> 9. The provisions of Rule 2(1)(d)(EE) of the Service Tax Rules, 1994 is reproduced below:
>
> *(d) "person liable for paying service tax", - (i) in respect of the taxable services notified under sub-section (2) of section 68 of the Act, means,-*
>
> .....
>
> *(EE) in relation to service provided or agreed to be provided by a director of a company or a body corporate to the said company or the body corporate, the recipient of such service;*
>
> 10. I find that there is no dispute regarding the taxability of the service provided or received in the case viz. the renting of immovable property. The dispute is regarding whether the said service, in the facts of the present case, is taxable at the hands of the service recipient or otherwise. It is the contention of the appellant that the said service has been provided by the owner of the property in his individual capacity

and not in the capacity of Director of the Company and, therefore, the service provided in the personal capacity cannot be considered as service provided in the capacity of Director, to be taxable under RCM at their end. I find that the words used in the Notification are 'by a director of a company to the said company' and not 'by a person who is director of a company'. Therefore, if the director of the company provides a service in some other capacity, the tax liability would be of the director as an individual service provider and it would be incorrect to consider the same as a service provided in the capacity of a director of the company to said company.

10.1 The said notification covers the services provided by a Director of the company to the said company in the capacity of the director. It is an undeniable fact that the Director in his capacity as owner of the property has given his property on rent to the appellant and is being paid rent by the appellant for being the owner of the property and not for being the Director of the appellant. It is not the case of the department that the Director has rented his immovable property to the company as he was obliged to do so for being appointed as director of the company. Further, it is a fact that for providing renting services one need not be a director of the company. The department has not brought on record anything which suggests that the renting services received by the appellant from their Director was provided to them in the capacity as Director of the company. The rent being paid by the appellant was to the owner of the property and not to the Director of the company. Such a case, in my view, is not covered under the reverse charge mechanism in terms of Notification No.30/2012-ST but rather the Director, in his individual capacity as a service provider, would be liable to discharge the applicable service tax liability, if any.

11. The issue involved in the present appeal is identical to that decided by me in the case of Sheth Insulations Pvt Ltd vide OIA No. AHM-EXCUS-001-APP-61/2020-21 dated 24.12.2020, wherein it was held that :

> "8.2 Under the circumstances, the fair conclusion which can be drawn is that just because the owner of the property is Director of the appellant, the renting service received by the appellant does not become taxable at their end being the service recipient. The rent paid by the appellant company in the present matter, therefore, cannot be charged to service tax under Notification No.30/2012-ST. The liability to pay service tax in the case would lie on the service provider. Hence, the order of adjudicating authority to charge service tax under reverse charge mechanism under Rule 2(1)(d)(EE) of the Service Tax Rules, 1994 and Notification No.30/2012-ST as amended is not legally correct and fails to sustain on merits and requires to be set aside."

12. I further find that a similar view has been taken by the Commissioner (Appeals), Ahmedabad earlier also in 1) Order-in-Appeal No.AHM-EXCUS-003-APP-0257-17-18 dated 23.03.2018 in the case of M/s. Jay Pumps Pvt. Ltd.; 2) Order-In-Appeal No. AHM-CXCUS-003-APP-003-18-18 dated 27.04.2018 in the case of M/s Advance Addmine Pvt Ltd.; and 3) Order-in-Appeal No. AHM-EXCUS-002-APP-004-2020-21 dated 22.04.2020 in the case of M/s Emtelle India Ltd.

9.1 I find that the appellant have relied upon OIA No.AHM-EXCUS-003-APP-0257-17-18 dated 23.03.2018 in the case of M/s. Jay Pumps Pvt. Ltd passed by the Commissioner (Appeals), Ahmedabad wherein it was held that service tax is not payable under reverse charge in respect of the rent paid to the Director of the company. A similar view was taken by this authority in the case of Grace Castings Limited (supra) wherein the decision in the case of Jay Pumps Pvt Ltd was also referred to. I find that neither of the said orders have been overruled by any higher appellate authority. Therefore, considering the similarity of facts, I hold that appellant are not liable to pay service tax under reverse charge on the rent amount paid to their Director in respect of immovable property given on rent to the company. The demand in this regard confirmed vide the impugned order is, therefore, not legally sustainable and, is accordingly, set aside.

10. In view of the facts discussed herein above, the impugned order in so far as it pertains to disallowing of Cenvat Credit of input service on service tax paid for transportation of goods by rail and the demand for service tax on the rent paid to the Director under reverse charge is set aside and the appeal filed by the appellant is allowed. The demand pertaining to the short payment of service tax on transportation of goods by rail is set aside and the appeal is allowed by way of remand in the light of the observations and directions contained in Para 7.2 above.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed off in above terms.

(Akhilesh Kumar)
Commissioner (Appeals)
Date: 10th February, 2022.

Attested:

(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.

BY RPAD / SPEED POST

To

M/s. Navmeet Cargo Private Limited, Appellant
5, Mangaldeep Complex,
Near Mahesh Petrol Pump,
Visnagar-Mehsana Road,
Visnagar – 384 315

The Assistant Commissioner, Respondent
CGST & Central Excise,
Division- Mehsana,
Commissionerate : Gandhinagar

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Gandhinagar.
3. The Assistant Commissioner (HQ System), CGST, Gandhinagar. (for uploading the OIA)
4. Guard File.
5. P.A. File.