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 : **20220264SW000061616B**

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1505/2021 /5993-97

ख अपील आदेश संख्या Order-In-Appeal Nos.**AHM-EXCUS-003-APP-92/2021-22**
दिनाँक Date : **21-01-2022** जारी करने की तारीख Date of Issue 07.02.2022

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

ग Arising out of Order-in-Original No. **42/AC/MEH/CGST/20-21** दिनाँक: **12.02.2021** issued by Assistant Commissioner, CGST& Central Excise, Division Mehsana, Gandhinagar Commissionerate

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

M/s R.L. Agarwalla & Co.
F-34, Wide Angle, Highway Road,
Mehsana-384002

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:

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूवोक्त 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 दिनॉक 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 जहॉ 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 अपील:–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

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

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 filled 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.

(7) 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:

(iv) amount determined under Section 11 D;
(v) amount of erroneous Cenvat Credit taken;
(vi) 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. R.L. Agarwalla & Co, F-34, Wide Angle, Highway, Mehsana – 384 002 (hereinafter referred to as the appellant) against Order in Original No. 42/AC/MEH/CGST/20-21 dated 12-02-2021 [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 is engaged in providing 'Maintenance & Repair service', 'Commercial or Industrial Construction service', 'Works Contract service', 'Rent-a-Cab service' and is holding Service Tax Registration No. AAGFR6664RST001. During the course of audit of records of the appellant and on verification of documents, it was noticed that the appellant had shown taxable value in their ST-3 returns on the lower side resulting in short payment of service tax amounting to Rs.13,52,879/- during the F.Y. 2010-11 to F.Y. 2013-14. Therefore, a SCN bearing F.No. V.ST/15-62/Dem/OA/15-16 dated 05.11.2015 was issued to the appellant by the Additional Commissioner, erstwhile Central Excise & Service Tax, Ahmedabad-III.

2.1 For ascertaining the payment of service tax liability for subsequent period, the appellant was asked to produce copies of the Balance Sheet, Profit and Loss Account, Form 26AS, contracts, invoice etc. for the period from F.Y. 2014-15 to June, 2017. The appellant produced the same vide their letters dated 15.09.2017 and 22.11.2018. On scrutiny of the documents submitted by the appellant, it appeared that the appellant had provided services of loading and unloading of pipes and materials, transportation of oil from well head installations to group gathering stations by road tankers etc., work related to hiring service of scrapping winches units for scrapping of tubing in self-flow wells to remove any obstruction in flow of oil/gas, supply of vehicles/taxis on hire basis, which normally are used by their customer- ONGC to visit various sites of the assets. From the tenor of the agreements and bills of the appellant, it

appeared that they had supplied vehicles on hire basis for use by ONGC. The vehicles were supplied with drivers and it appeared that the legal right of possession and effective control remained with the appellant.

2.2 It further appeared that the appellant were also providing 'Supply of Tangible Goods service and not GTA service as they were not providing the service of transportation of goods and also they were not issuing any LR or Consignment Note for the goods transported. The appellant was only issuing monthly bills for hiring charges for the vehicles supplied by them. The appellant was not paying service tax on such hiring charges collected from their customers. The appellant, it appeared, was required to pay service tax on full value without any abatement on the value. It further appeared that the appellant were not fulfilling any of the conditions for classifying the service under GTA, they however, appeared to fulfill all the features of the definition of 'Supply of Tangible Goods' service. It, therefore, appeared that the appellant was required to pay service tax on the amount received by them in the name of vehicle hire receipt/transportation charges, which they had not paid. It appeared that the appellant had not paid service tax amounting to Rs.26,94,196/- on the taxable value of Rs.2,17,97,702/- during the F.Y. 2014-15 which is required to be demanded and recovered from them.

2.3 The appellant were, therefore, issued a SCN bearing No. V.ST/118-57/RL Agarwalla/2018-19 dated. 14.02.2019 wherein it was proposed to :

- classify the service provided by them under the taxable category of 'Supply of Tangible Goods' service;
- demand and recover service tax amounting to Rs.26,94,196/- under the proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994;
- impose penalty under Section 76, 77(2) and 78 of the Finance Act, 1994.

3. The said SCN was adjudicated vide the impugned order wherein activity of the appellant was ordered to be classified under 'Supply of

Tangible Goods' service and the demand for service tax was confirmed along with interest. Penalty was also imposed under Section 77 (2) and Section 78 of the Finance Act, 1994.

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

i. They are engaged in providing of the scrapping of tubing in self flow wells to remove any obstruction in flow of oil/gas along with all accessories and operating crew as per scope of work. Exploration of oil was liable to excise duty during the impugned period and they were working as job worker for the manufacturing of goods at site. Accordingly, they had claimed exemption under Notification No. 25/2012-ST.

ii. On perusal of the contract agreement and the invoices it can be seen that they have been awarded the work of hiring service of scrapping winches units for scrapping of tubing in self flow wells to remove obstruction in flow of oil/gas. From these documentary evidences, it is clear that service provided pertains to intermediary for the manufacturing and exempted vide mega exemption.

iii. They rely upon the decisions in the case of : Rameshchandra C. Patel Vs. Commissioner of Service Tax, Ahmedabad – 2012 (25) STR 471 (Tri.-Ahmd.); Divya Enterprises Vs. Commissioner of Central Excise, Mangalore – 2010 (19) STR 370 (Tri.- Bang.); Seven Hills Construction Vs. Commissioner of Service Tax, Nagpur – 2013 (31) STR 611 (Tri.- Mumbai); Satara Sahakari Shetu Audyogic Oos Todani Vahtook Society Vs. CCE, Kolhapur – 2014 (36) STR 123 (Tri.- Mumbai); Abhijit Trading Company Vs. Commissioner of Central Excise, Pune-III – 2017 (47) STR 258 (Tri.-Mumbai); Manish Enterprises Vs. Commissioner of Central Excise, Pune-I – 2016 (42) STR 352 (Tri.-Mumbai); Om Enterprises Vs. Commissioner of Central Excise, Pune-I – 2018 (17) GSTL 260 (Tri.-Mumbai).

iv. Regarding transport service of material, it is submitted that they are undertaking transportation of material of ONGC as per the contract

terms. In terms of the contract they have to give specified number of vehicles with Driver and Cleaner. The cost of fuel, Driver and Cleaner are paid by them but the vehicle will be under the control of ONGC for their use. The rate for the contract has also been specified. Based on the work performance report of tanker at the end of the month, they prepare a single bill for the entire month.

v. They have provided the service of transportation of material, so the demand for service tax under the category of supply of tangible goods is not sustainable.

vi. The service provided by them falls under the category of Goods Transport Service for which the recipient is liable to pay the service tax in terms of Notification No. 35/2004-ST dated 03.12.2004.

vii. They rely upon the decisions in the case of : Subhash Engineer & Contractor Vs. Commissioner of Service Tax, New Delhi – 2013 (32) STR 45 (Tri.-Del); GMMCO Ltd Vs. Commissioner of Central Excise, Nagpur – 2013 (31) STR 675 (Tri.-Mumbai); Payal Electric Decoration Vs. Commissioner of Central Excise, Rajkot – 2013 (31) STR 590 (Tri.-Ahmd.); Birla Ready Mix Vs. Commissioner of Central Excise, Noida – 2013 (30) STR 99 (Tri.-Del.); Bharathi Soap Works Vs. Commissioner of Customs & Central Excise, Guntur – 2008 (9) STR 80 (Tri.-Bang.); MSPL Ltd. Vs. Commissioner of Central Excise, Belgaum – 2009; Sandur Manganese & Iron Ores Ltd. Vs. Commissioner of Service Tax, Belgaum – 2009 (16) STR 740 (Tri.-Bang.); C.C.E, C & ST, Bhubaneshwar-II Vs. Vinshree Coal Carriers Pvt Ltd – 2008 (10) STR 473 (Tri.-Kolkata).

viii. When the service receiver i.e. ONGC has already discharged service tax under GTA service, there would be no question of demanding service tax from them.

ix. They are engaged in undertaking renting of cab for the employee of ONGC as per contract terms. They have provided passenger vehicle on the basis of kilometer, therefore, it has been covered under RCM and service tax is payable by recipient of service.

x. If tax was charged by them, the same would have been allowed as cenvat credit to the recipient of service, so it would be revenue neutral.

xi. They rely upon the decision in the case of : Popular Vehicles & Services Ltd. Vs. Commissioner of Central Excise, Kochi – 2010 (18) STR 493 (Tri.- Bang.); Agarwal Infracon Pvt Ltd. Vs. CCE, Ahmedabad – 2010 (18) STR 39 (Tri.-Ahmd.); Sakthi Auto Components Ltd Vs. Commissioner of Central Excise, Salem – 2009 (14) STR 694 (Tri.-Chennai).

xii. The SCN covers the period from 01.04.2014 to 30.06.2017 and was issued on 21.04.2017. The department has knowledge of all the activities carried out by them. They were issued a SCN dated 05.11.2015 and for the same issue extended period cannot be invoked. The SCN has baldly alleged suppression of information from the department.

xiii. They rely upon the decision in the case of Nizam Sugar Factory Vs. Collector of Central Excise, A.P. – 2006 (197) ELT 465 (SC).

xiv. Extended period cannot be invoked as there is no suppression, willful mis-statement on their part.

xv. The SCN has not given any reason whatsoever for imposing penalty under Section 78 of the Act. No evidence has been brought out to show that they had suppressed anything from the department. They rely on the decision in the case of Steel Case Ltd – 2011 (21) STR 500 (Guj.).

xvi. Penalty cannot be imposed under Section 77 as there is no short payment of service tax.

xvii. Even if there was any contravention of the provisions, the same was on account of their bonafide belief which was based on reasons stated above. They rely upon the decision in the case of Pushpam Pharmaceuticals Company Vs. CCE – 1995 (78) ELT 401 (SC) and CCE Vs. Chemphar Drugs and Liniments – 1989 (40) ELT 276 (SC).

xviii. The present case is covered by Section 80 of the Act which expressly provides that no penalty is imposable under Section 77 and 78 if the appellant has a reasonable cause for default.

xix. The issue involved is of interpretation of statutory provision and therefore, penalty cannot be imposed. They rely upon the decision in the case of :- Bharat Wagon & Engg. Co Ltd. Vs. Commissioner of C.Ex., Patna – (146) ELT 118 (Tri.-Kolkata); Goenka Woolen Mills Ltd Vs. Commissioner of C.Ex., Shillong – 2001 (135) ELT 873 (Tri.-Kolkata); Bhilwara Spinners Ltd Vs. Commissioner of C.Ex, Jaipur – 2001 (129) ELT 458 (Tri._Del).

5. Personal Hearing in the case was held on 17.11.2021 through virtual mode. Shri Vipul Khandhar, CA, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in appeal memorandum.

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum and submissions made at the time of personal hearing. I find that the issues before me for decision are :

I) Whether the appellant has by giving Scrapping winches units on hire basis to M/s. ONGC provided 'Supply of Tangible Goods service' as claimed by the department or service pertaining to intermediary for manufacturing and consequently exempt under Serial No. 30 of Notification No.25/2012-ST dated 20.06.2012 as claimed by the appellant ?

II) Whether by giving vehicles for transportation of goods and material on hire basis M/s.BSCC Infrastructure Pvt Ltd, the appellant had provided 'Supply of Tangible Goods service' as claimed by the department or GTA service as claimed by the appellant ?

III) Whether by giving vehicles for transportation of passengers on hire basis to M/s.Vishal Enterprise, the appellant had provided 'Supply of Tangible Goods service' as claimed by the department or Rent-a-Cab service as claimed by the appellant ?

6.1 It is observed that the SCN in the matter has been issued in continuation of an earlier SCN dated 05.11.2015 issued by the then Additional Commissioner, Central Excise and Service Tax, Ahmedabad-

III. Further, I find that the demand confirmed vide the impugned order pertains to the period F.Y. 2014-15 i.e. in the regime of negative list of services. With the introduction of the negative list of services regime from 01.07.2012, the classification of services in terms of Section 65 of the Finance Act, 1994 is no more in force. The taxability of a service is required to be examined in terms of the provisions of Section 65B, 66D and 66E of the Finance Act, 1994. Definitions have been provided under Section 65B of the Finance Act, 1994 and those relevant to the issue involved in the present appeal are reproduced as under :

> 65B (26) : " "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"
>
> 65B (44) : " "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include-"

6.2 Section 66D of the Finance Act, 1994 specifies the declared services and sub-section (f) of Section 66D, which is relevant to the issue involved in the present appeal, is reproduced as under :

> 66D (f) : "transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods".

7. I take up the issues, enumerated above, for decision in light of the above provisions of law. As regards supply of scrapping winches units, I find that the appellant is supplying the scrapping winch units for scraping of tubing in self flow wells to remove any obstruction in flow of oil/gas. The appellant have claimed this was in the nature of intermediary service – job work- provided for manufacturing of goods and, hence, exempted. The appellant have not specifically stated as to under which Notification they are claiming exemption. However, I find that Sr.No.30 of Notification No. 25/2012-ST dated 20.06.2012 grants exemption from service tax in respect of 'carrying out of intermediate production process as job work'. The said entry at Sr.No.30, as it stood at the relevant point of time, is reproduced as under :

"30. Carrying out an intermediate production process as job work in relation to -

(a) agriculture, printing or textile processing;

(b) cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act, 1985 (5 of 1986);

(c) any goods on which appropriate duty is payable by the principal manufacturer; or

(d) processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines upto an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year;"

7.1 The appellant have while claiming exemption, presumably under the above said notification, not put forth any documents or evidences to substantiate their claim that the activity under taken by them pertains to intermediate production process. They have also not specifically stated as to how the activity carried out by them amounts to an intermediate production process. On the contrary, I find that in the invoice reproduced at Para 17 of the SCN, it is stated that "*against the stated order for winches deployed in ankleshwar asset scrapping of wells*". What this indicates is that the appellant have merely deployed winches for scrapping of wells. This in itself does not amount to the appellant having undertaken any activity amounting to intermediate production process. I, therefore, do not find any merit in the contention of the appellant. The appellant are basically giving out scrapping winch units on hire basis to ONGC. Even accepting that the scrapping of the self flow well tubing are carried out by the appellant, it would not render the activity to be connected to an intermediate process in the manufacturing of goods.

7.2 I further find that in para 11 of the SCN issued to the appellant it is stated that "*On perusal of the Contract Agreement No. ANK/MM/P4/20/Scrapping Services/2013-14 dtd.03.01.2014, it is noticed that they have been awarded the work for hiring service of scrapping winches units for Ankleshwar Asset for scrapping of tubing in self-flow*

wells". It is clear from this that the service for which the appellant had a contract was '*hiring of scrapping winches unit*'. I find that the hiring of such scrapping winch units by the appellant is more appropriately and specifically covered by the category of service in terms of Section 66D (f) of the Finance Act, 1994 inasmuch as in the instant case, I find that the scrapping winch units are hired out to ONGC by the appellant but there is no material on record to indicate that the hiring terms included transfer of right to use from the appellant to ONGC. In this regard, I also find it relevant to refer to the provisions of Section 66F (2) of the Finance Act, 1994, which reads as " *Where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description.*" In the instant case, the activity undertaken by the appellant i.e. giving scrapping winch units on hire basis is more specifically covered by the ambit of the service in terms of Section 66D (f) of the Finance Act, 1994. Therefore, the same shall prevail over the vague claims put forth by the appellant of the activity being an intermediary in manufacturing activity. Consequently, I am of the view that giving scrapping winch unit on hire by the appellant is a taxable service covered under Section 66D (f) of the Finance Act, 1994 and chargeable to service tax accordingly.

8. As regards the issue of the appellant giving vehicles for transportation of goods and material on hire basis, I find that a copy of the work order has been reproduced at para 19 of the SCN issued to the appellant. In the said Work Order No. BSCC/MSH/AGARWALLA/Vehicles-TRAILOR/2014 dated 13.02.2014, it is stated that "*With reference to above, M/s. BSCC Infrastructure Pvt. Ltd., Mehsana is pleased to place this work order for Hiring Services of Goods Transportation by road, of Vehicles for material shifting used at different location...*". Further, in the description of services it is stated that "*Providing trailer for goods transportation a make not older than 2014, operating on all days on 24 hours per trip basis*". From the wordings of the work order and the wordings of the description of services, it is clear that the appellant has been given the work order for 'Hiring' of vehicles for

goods transportation. This indicates that the appellant has not been given the work order for transportation of goods but they have only been given the work order for hiring of vehicles which the customer would be using for transportation of goods. Therefore, it cannot be said that the appellant is, by hiring out vehicles, providing the service of goods transportation. Hence, I do not find any merit in the contention of the appellant that the service provided by them is that of Goods Transport Agency. The service provided by the appellant is appropriately covered within the ambit of Section 66D (f) of the Finance Act, 1994 and chargeable to service tax accordingly.

8.1 I find that the Hon'ble Tribunal had in the case of Sant Roadlines Vs. Commissioner of C.Ex. & S.T, Panchkula – 2020 (43) GSTL 206 (Tri.-Chan.) held, while deciding a matter involving a similar issue, that :

> **"8.** On going through the definition in terms of Section 65(105)(zzzzj) of the Finance Act, 1994 "the taxable service means any service provided or to be provided to any person, by any other person in relation to supply of tangible goods including machinery, equipment and appliances for use, without transferring right of possession and effective control of such machinery, equipment and appliances is supply of tangible goods for use service".
>
> **9.** We are of the view that, as the right of possession of the vehicle has been in control of the appellant, therefore, they are liable to pay Service Tax under the said category but the appellant was under *bona fide* belief that they were engaged in the activity of transportation of goods on behalf of the service recipient and the said service is not taxable in the hands of the appellant. The said understanding of the appellant has been evidenced by various agreements between the appellant and the service recipient which clearly shows that the main activity of the appellant is transportation of goods on behalf of the service recipient."

8.2 The above decision of the Hon'ble Tribunal was in the context of both the pre-negative list and post negative list regime and therefore, is applicable to the facts involved in the present appeal.

8.3 It is also observed that the appellant have contended that the service recipient i.e. M/s. ONGC have already discharged service tax under the category of GTA and, therefore, service tax cannot be demanded from them. I find that in the work order referred to in the above paragraph it is

stated that "The above rates are inclusive of service tax". It is a settled position in law that the same service cannot be subjected to taxation from both the provider as well as the recipient. Irrespective of the classification of the service under dispute, if service tax has been discharged by the service recipient, the service provider cannot be again asked to discharge service tax on the same service. However, in the impugned order there is no discussion or finding on the issue of whether the service tax has been discharged by the service recipient on reverse charge. I am, therefore, of the view that the matter is required to be decided afresh by considering the submissions of the appellant regarding service tax having been discharged by the service recipient under reverse charge. The demand would have to be quantified after considering this aspect. Consequently, the impugned order pertaining to this issue is required to be set aside and remanded back to the adjudicating authority for deciding afresh.

9. On the issue of the appellant giving vehicles for transportation of passengers on hire basis, I find that a Work Order bearing No. VISHAL/MSH/AGARWALLA/Vehicles/2014 dated 13.02.2014 has been reproduced at para 21 of the SCN. In the said Work Order, the description of services has been stated as " *Providing Hiring Services of Mahindra Bolero 7 seater (AC) Jeep a make not older than 2014, operating on all days on 24 hours per trip basis*". It is clear from the description of services as per the work order, that the appellant has been given the work order for hiring of vehicles which would be used by the customer for transportation of passengers. The words 'hiring' and 'renting' are interchangeable and basically amount to the same. In this regard, I find it worthwhile to refer to the judgment of the Hon'ble High Court of Gujarat in the case of Commissioner of Service Tax Vs. Vijay Travels – 2014 (36) STR 513 (Guj.). The relevant part of the judgment is reproduced as under :

> **"14.** Requirements of rent-a-cab-scheme operator to have minimum 50 numbers of vehicles and also having licence under the law also was done away with by subsequent amendment.
>
> Legislature has not made any distinction between "hiring" of vehicle or "renting" of vehicle for the purpose of levying service tax. Such assertion of ours is demonstrated on the basis of discussion held herein above as also from the following paragraphs.

14.1 It would amount to artificial requirement of statute if only those persons are taxed who give away their vehicles without retaining any control either personally or through driver. The concept of lease and licence is sought to be brought into picture by contending that lease would have insurable interest which is absent in licence.

It is a well settled principle of interpretation of statute that taxing statute must be read and interpreted giving meaning to the plain language. The principle of strict construction applicable to taxing statute would not mean where the same falls formally within the ambit of law, the court can avoid the tax by putting restricted construction on some supposed hardship.

The Supreme Court in case of *Commissioner of Wealth-tax* v. *Smt. Hashmatunnisa Begum,* reported in AIR 1989 SC 1024, has held that no question of strict construction would arise when statutory provision itself is reasonably open to only one meaning. The Apex Court has gone to the extent of saying that when intention of the taxing statute is clear, it cannot be defeated by mere defect in phraseology on the ground that provision more artistically could have been drafted (AIR 1971 SC 2463).

The Finance Minister while presenting the Budget has chosen to bring under the tax net various specified services. As far as Finance Bill, 2000, and explanatory note issued by the Ministry are concerned, it was indicated in respect of administration of service tax, few changes have been made which would require necessary action. The tour operator and rent-a-cab scheme operator who were exempted from payment of service tax were indicated not to be getting any such benefit.

14.2 At this stage, it would be worthwhile to consider the definition of "Rent". Rent means the act of payment for the use of something. It is the act of letting out or allowing the use like apartment, house or car.

Short Oxford English Dictionary, defines "Rent" as under :

"Source of revenue or income, separate pieces of property yielding a certain return to the owner."

"A tax or similar charge levied by or paid to a person."

As per the *Reader's Digest Great Encyclopedic Dictionary*, "Rent" means "Tenant's periodical payment to owner or landlord for use of land, house, or room; payment for hire of machinery etc. charge, periodical charge on land etc. reserved to one who is not the owner-free, exempt from rent; roll, register of person's lands etc. with rents due from them; sum of person's income from rents; sum of person's income from rents-service, (tenure by) personal service in lieu of or addition to rent. Take, occupy, use, at a rent; let or hire for rent; be let at specified rent; impose rent on (tenant)."

As per *MacMilan Dictionary* "Rent" means an amount of money that you pay regularly for using a house, room, office etc. that belongs to someone else.

As far as word "hire" is concerned, "hire" means "payment under contract for the use of something."

"Hiring" is bailment by which the use of thing or the services are contacted for, at a certain price and reward.

As per *Black's Law Dictionary*, "hiring" means "a contract by which one person grants to another either the enjoyment of a thing or the use of the labor and industry, either of himself or his servant, during a certain time, for a stipulated compensation, or where one contracts for the labor or services of another about a thing bailed to him for a specified purpose.

14.3 Renting means a usually fixed periodical return, especially, an agreed sum paid at fixed intervals by a person for any use of the property or car. It is also the amount paid by a hirer to the owner for the use of the property or a car. Hiring is also engaging services or wages or other payment. It also amounts to engaging temporary use.

It cannot be disputed that both in "renting" and "licensing", *de facto* possession of the thing is enjoyed. Difference is well carved out under the law wherein both, *de jure* possession and control is given, but in "renting", it is right-in-rem whereas in "licensing", it is right-in-persona. When rent-a-cab scheme operator gives the car on rent, *de facto* possession is, of course, there but, it is not acceptable to uphold that wherever *de jure* control and possession of the vehicle stands transferred in law from the owner to the person on renting/hiring the service that the service tax is leviable and this is, of course, not different than services rendered on a contractual basis, providing transport service for fixed amount of periodical return or fare.

We need not be oblivious of the fact that for the purpose of regulating the business of renting of motor cabs or motor cycles to persons who are desirous of driving by themselves or through drivers, either for their own use or for any matters connected herewith, the scheme is made by the Central Government,

Conceptually and essentially, if the nature of service provided is the same, natural corollary is that such service shall be taxed under the taxing statute. It nowhere culls out from the taxing statute that the same contemplated taxing those services where legal possession is handed over by the owner of the person renting the vehicle and where such *de jure* possession continue with the owner or person providing the service to the customer, such service is to be excluded.

We also need to remind ourselves that concept of providing transportation service where *de jure* control remains with the owner or company of the vehicle and the driver and yet, it functions in accordance with the wish and desire of the person hiring such vehicle is extremely popular in India unlike the concept of person renting the cab desiring to drive himself by having all liabilities on himself. In absence of any specific exclusion in the statute of such service from the taxing net, large portion of such services cannot be held to be non inclusive by any artificial interpretation.

Principle of *contemporaneous exposition* whereby yellow and black taxes are not subjected to service tax also would not preclude us to resort to such interpretation.

14.4 From the aforesaid discussion, it can be said that the petitioner cannot escape tax liability on the ground that the hiring is different from renting as the intention of the Government is to tax service provider of a service which involves both hiring and renting of a cab for a longer duration and distinction as sought to be carved out by the petitioner is not finding favour with this Court."

9.1 The ratio of the judgment of the Hon'ble High Court of Gujarat is squarely applicable to the facts of the present appeal and therefore, I find merit in the contention of the appellant that the service provided by them is that of Rent-a-Cab service i.e. renting of motor vehicle designed to carry passengers. The appellant have also contended that the service tax is already paid by the service recipient under reverse charge. That being the case, there cannot be, in any event, any demand for service tax from the appellant as that would amount to taxing the same service twice. Therefore, the demand confirmed vide the impugned order in this regard is not sustainable on merit.

10. The appellant have also contended that the extended period of limitation cannot be invoked since the department was in the knowledge of the activities carried out by them and a SCN dated 05.11.2015 was issued them on the same issue for the period F.Y. 2010-11 to 2013-14. I find that the appellant had raised this issue in their submission made to the adjudicating authority. However, I find that submission of the appellant have not been addressed and no findings have been recorded in the impugned order by the adjudicating authority.

11. I further find that in the SCN issued to the appellant the demand has been raised on the consolidated value in respect of three issues as enumerated hereinabove and no duty demand has been worked out individually on these issues. The impugned order too has confirmed the demand in its entirety and there is also no service wise break-up of the demand.

11.1 As held in the preceding paragraphs, the appellant is liable to pay service tax in respect of the service of providing scrapping winches units on hire basis. The demand for service tax pertaining to this service is required to be quantified. The demand in respect of the service of hiring of vehicles for transportation of goods is required to be re-determined after verifying and considering the service tax, if any, that has already been paid on reverse charge by the service recipient. The appellant is, however,

not liable to pay service tax on the service of providing vehicles on hire basis for transport of passengers. Therefore, the impugned order is set-aside and remanded back to the adjudicating authority for denovo proceedings. While deciding the case, the adjudicating authority shall also consider the submissions of the appellant on the grounds of limitation and shall record his finding on the same.

12. 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.

31st January, 2022.

(Akhilesh Kumar)
Commissioner (Appeals)
Date: 01.2022.

Attested:

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

BY RPAD / SPEED POST

To

M/s. R.L. Agarwalla & Co,
F-34, Wide Angle,
Highway, Mehsana – 384 002 — Appellant

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

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Gandhinagar.
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