



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeals Ahmedabad Commissionerate  
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आज़ादी का  
अमृत महोत्सव

**By Regd. Post**

DIN No.: 20221264SW000000EEB4

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/759/2022-APPEAL / 6415 -19
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-081/2022-23 and 22.12.2022
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	22.12.2022
(ङ)	Arising out of Order-In-Original No. AC/SR/04/ST/Kadi/2021-22 dated 17.01.2022 passed by the Assistant Commissioner, CGST & CE, Division-Kadi, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Shree Sai Logistics, 18, Gangotri Shopping Centre, Thal Road, Kadi, Mehsana, Gujarat-384505

कोई व्यक्ति इस अपील-आदेश से असंतोश अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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:-

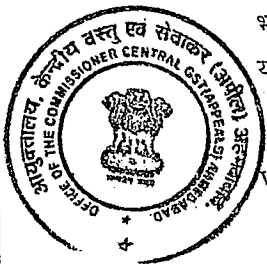
**Revision application to Government of India:**

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में 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 :-

A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> 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 :-

(क) 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 में हो माल की प्रक्रिया के दौरान हुई हो।

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.

(ख) 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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

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.

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

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

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट 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।

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.

(2) 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 दिनांक 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 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 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 :-

(2) उक्तलिखित परिच्छेद 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004. In case of appeals other than as mentioned above para.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-8 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. Registrar 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 आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

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 notwithstanding 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 शुल्क अधिनियम 1970 यथा संबोधित की अनुसूची -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 का न्यायालय 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 is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपील 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)

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) 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:

- (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.

(6)(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।

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."



अपीलिय आदेश/ ORDER-IN-APPEAL

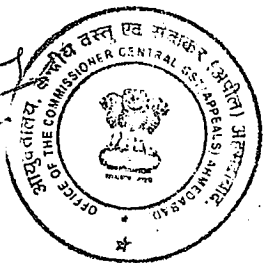
This Order arises out of an appeal filed by M/s. Shree Sai Logistics, 18, Gangotri Shopping Centre, Thol Road, Kadi, Dist.: Mehsana, Gujarat - 382715 [hereinafter referred to as "the appellant"] against AC/S.R./04/ST/KADI/2021-22 dated 17.01.2022 [hereinafter referred to as "the impugned order"] passed by the Assistant Commissioner, CGST & Central Excise, Division: Kadi, Gandhinagar Commissionerate [hereinafter referred to as "the adjudicating authority"].

2. Facts of the case, in brief, are that the appellant were engaged in providing Transport of Goods by Road/Goods Transport Agency services under Service Tax Registration No. AXCPP6441PSD001. As per the information received from the Income Tax department, it was observed that the appellant had shown 'Sales/Gross Receipts from Services (Value from ITR)' as Rs. 3,69,11,470/-; 'Total Amount paid/credited under Section 194C, 194H, 194I and 194J of the Income Tax Act, 1961' was shown as Rs. 2,93,631.7 and that 'Gross Value of Services provided' was shown as Rs. 0/-. In order to explain these discrepancies, the appellants were issued letters/emails requesting them to explain the reasons for such discrepancies and submit copies of Balance Sheet, Profit & Loss Account, Income Tax Returns, Form-26AS, Service Income & Service Tax ledger and Service Tax (ST-3) returns for the F.Y. 2014-15. The appellant did not respond.

2.1 It appeared to the department that nature of activities undertaken by the appellant were covered under the definition of service under the Finance Act, 1994 and the service tax payable was determined on the basis of Differential value of sale of service mentioned in Income Tax data with those declared in ST-3 Returns as per details below:

(Amount in Rs.)

Financial Year	Value of services declared in ITR	Value of total amount paid/credited under 194C, 194H, 194I, 194J	Value of services provided as per ST-3 returns	Highest Difference	Basic Service Tax @ 12%	Ed. Cess @ 2%	S & H Ed. Cess @ 1%	Total Service Tax
2014-15	3,69,11,470/-	2,93,631.7/-	0/-	3,69,11,470/-	44,29,376/-	88,588/-	44,294/-	45,62,258/-



2.2 The appellant were issued a Show Cause Notice No. IV/16-15/TPI/PI/Batch 3C/2018-19/Gr.IV dated 25.06.2020 (in short SCN) demanding Service Tax amounting to Rs. 45,62,258/- under proviso to Section 73 (1) of Finance Act, 1994 read with Section 68 of the Finance Act, 1994, read with relaxation provisions of Section 6 of Chapter V of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020, promulgated on 30.03.2020, by invoking extended period of limitation along with interest under Section 75 of the Act. The SCN also proposed imposition of penalty under Section 77 and Section 78 of the Finance Act, 1994.

3. The SCN was adjudicated vide the impugned order wherein the proposals made the SCN were confirmed.

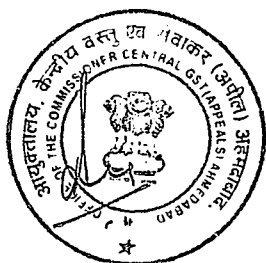
4. Being aggrieved by the impugned order, the appellant has preferred this appeal on following grounds:

(i) They were engaged in the business of transportation of goods and are a Proprietorship firm. In terms of Notification No. 30/2012-ST dated 20.06.2012, the services provided by them stands covered under Reverse Charge Mechanism and the service recipients were liable to pay the Service Tax and not the appellant.

(ii) The period involved in the SCN was F.Y.2014-15 and the SCN was issued on 25.06.2020. Hence, the demand stands time barred.

(iii) Relying upon the decision of the Hon'ble Tribunal in the case of Kush Constructions Vs. CGST NACIN – [2019(34) GSTL 606], they submitted that in absence of any investigation, demand based on ITR return is not sustainable. Also neither in the SCN nor vide the impugned order their Services were classified under any specific taxable 'Service'. They also relied on the decisions of the Tribunal in the case of Ganpati Mega Builders (I) Pvt. Ltd – 2022(58) GSTL 324 and in the case of Quest Engineers & Consultant (P) Ltd – 2002 (58) GSTL 245.

(iv) As they had filed their ST-3 returns regularly during the disputed period, therefore allegations of suppression of facts was unjustified and accordingly



extended period of limitation has been wrongly invoked in confirming the demand. Also penalties imposed under Section 77 and 78 were not proper and legal.

(v) In support of their contentions they also relied on the following citations:

- Judgement of the Hon'ble Supreme Court in the case of Commissioner of Central Excise, Jalandhar Vs Royal enterprises – 2016(337) ELT 482;
- Judgement of the Hon'ble Supreme Court in cases of Jaishri Engineering Co.(P) Ltd Vs C.C.E. – 1989 (40) ELT 214 (S.C.);
- Judgement of the Hon'ble Tribunal in the case of Hi-Life Tapes (P) Ltd. Vs. Collector of Central Excise – 1990(46) E.L.T.430 (Tri.);
- Judgement of the Hon'ble Supreme Court in case of Hindustan Steel Vs State of Orissa – 1978 (2) ELT (J 159) (S.C.);
- Commissioner of Central Excise, Jalandhar Vs S. K. Sacks (P) Ltd. – 2008 (226) ELT 38 (P&H);
- In the case of Indopharma Pharmaceutical Works – 1998 (33) ELT 548 (Tri.);
- In the case of Bhilai Conductors (P) Ltd. – 2000 (125) ELT 781 (Tri.);
- In the case of Tamil Nadu Housing Board – 1994 (74) ELT 9 (S.C);

5. Personal Hearing in the case was held on 22.11.2022. Mr. Naimesh K. Oza, Advocate, appeared for personal hearing on behalf of the appellant. He re-iterated submissions made in the appeal memorandum. He also submitted an additional written submission during hearing. He stated that the firm is a proprietorship concern and the liability is on the service recipient under reverse charge mechanism.

5.1. In the additional written submissions, the appellant has reiterated submissions made in the appeal memorandum. The appellant have also submitted copies of random Lorry Receipts (LRs) for the period F.Y.2014-15 in support of their contention that they were providing “Goods Transport Service by road”.

6. I have carefully gone through the facts of the case available on record, grounds of appeal in the appeal memorandum, additional written submission, oral submissions made during personal hearing and the impugned order passed by the adjudicating authority. The issue before me for decision is whether the impugned order passed by



the adjudicating authority, in the facts and circumstances of the case, confirming the demand of service tax amounting to Rs. 45,62,258/- under proviso to Section 73 (1) of Finance Act, 1994 by invoking extended period of limitation alongwith interest, and imposing penalties under Section 77 and Section 78 of the Finance Act, 1994, is legal and proper or otherwise. The demand pertains to the period F.Y. 2014-15.

7. It is observed that the appellant are registered with the department under Service Tax Registration No. AXCPP6441PSD001. The SCN in this case has been issued on the basis of data received from the Income Tax Department, which showed that the appellant had earned income amounting to Rs. 3,69,11,470/-, which was excess to the amount of taxable service declared in the ST-3 returns for the relevant period. The service tax liability was determined on this amount at Rs. 45,62,258/-. It is the contention of the appellant that they are Proprietorship firm and were engaged in providing services by way of "Transportation of Goods" to various firms/companies during the relevant period F.Y. 2014-15. By virtue of Notification No. 30/2012-ST dtd.20.06.2012, the liability of Service Tax lies with the service receiver in their case and not with them.

7.1 It is observed that the SCN in question was issued based on the data received from the Income Tax department. The tax liability has been determined merely on Income Tax data and no further verification was done despite the appellant was registered with the department. Further, I find that no verification regarding nature of service provided by the appellant was done. Hence, it is observed that the SCN issued to the appellant in this case is vague and mechanically construed. In this regard, it would be relevant to refer to the CBIC Instructions dated 21.10.2021 which reads as:

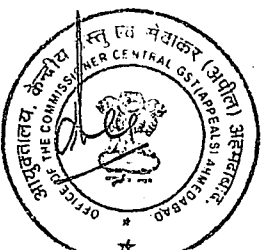
*Government of India  
Ministry of Finance  
Department of Revenue  
(Central Board of Indirect Taxes & Customs)  
CX & ST Wing Room No.263E,  
North Block, New Delhi,*

*Dated- 21<sup>st</sup> October, 2021*

To,  
All the Pr. Chief Commissioners/Chief Commissioners of CGST & CX Zone, Pr.  
Director General DGGI

Subject:-Indiscreet Show-Cause Notices (SCNs) issued by Service Tax Authorities-  
reg.  
Madam/ Sir,

...



2. In this regard, the undersigned is directed to inform that CBIC vide instructions dated 01.04.2021 and 23.04.2021 issued vide F.No.137/472020-ST, has directed the field formations that while analysing ITR-TDS data received from Income Tax, a reconciliation statement has to be sought from the taxpayer for the difference and whether the service income earned by them for the corresponding period is attributable to any of the negative list services specified in Section 66D of the Finance Act, 1994 or exempt from payment of Service Tax, due to any reason. It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.

3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently.

...

It is observed that the SCN in this case was issued indiscriminately based on the difference between ITR-TDS taxable value and the taxable value in the service tax returns without any verification of the facts, which is in violation of the directions issued by the CBIC vide aforesaid Instruction, indiscriminately.

8. On going through the impugned order, I find that the adjudicating authority has at Para-21 and 23 observed that:

“21. I find that the Noticee has shown its turnover as “Freight and Transport Income” in balance sheet which means that they are engaged in providing services of Transportation/goods transport agency services.”

...

“23. It can be seen from the above Notification that the taxable services provided or agreed to be provided by Goods Transport Agency by way of transportation of goods by road to following persons located in taxable territory, percentage of Service Tax payable by the person supplying the service is NIL.”

8.1 Further, the adjudicating authority has referred to definition of Goods Transport Agency and confirmed the demand at Para 26 of the impugned order by observing as under:

“26. Looking to the circumstances in the present case, I find that the Noticee has not acted as a Goods Transport Agency in as much as they have failed to produce documents which establish that the services they have provided are in relation to transport of goods by road. I further find that the Noticee has failed to produce any documents which can establish that they are issuing consignment note for





transporting such goods. The value of services provided in Service Tax Return is shown by the noticee as NIL. ....

I find that the noticee has not produced any evidence to prove in respect of value of services on which they have claimed exemption in ST-3 Returns. The noticee has not adduced any evidence in the form of documents such as Invoice, contract & agreements, work order, bank statements in support of their claim which exempts them from payment of Service tax....”

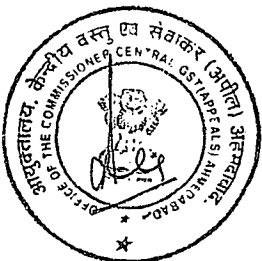
8.2 It is observed that though the adjudicating authority has arrived at the finding that the appellant had provided services of Transportation/Goods Transport Agency, he has confirmed the demand only on grounds that the appellant had not submitted any documents in support of them being “Goods Transport Agency”. Moreover, the demand has been confirmed entirely on the basis of data obtained from FORM-26AS of the Income Tax department without any reconciliation statement or analysis of data or any verification of the facts.

8.3 It is observed that the Hon’ble CESTAT, Allahabad in the case of M/s Kush Constructions Vs. CGST NACIN, ZTI, Kanpur vide Final Order No.-70323/2019 decided that :

*“...On perusal of record, we note that the appellants were registered with the Service Tax Department and also they were filing ST-3 returns. Revenue has compared the figures reflected in the ST-3 returns and those reflected in Form 26AS filed in respect of the appellant as required under the provisions of Income Tax Act, 1961. We note that without further examining the reasons for difference in two, Revenue has raised the demand on the basis of difference between the two. We note that Revenue cannot raise the demand on the basis of such difference without examining the reasons for said difference and without establishing that the entire amount received by the appellant as reflected in said returns in the Form 26AS being consideration for services provided and without examining whether the difference was because of any exemption or abatement, since it is not legal to presume that the entire differential amount was on account of consideration for providing services. We, therefore, do not find the said show cause notice to be sustainable. In view of the same, we set aside the impugned order and allow the appeal.*

8.4 The Hon’ble CESTAT, EZB, Kolkata in the case of M/s Luit Developers Private Limited, Assam Vs. Commissioner of CGST & Central Excise, Dibrugarh in Service Tax Appeal No. 75792 of 2021, pronounced that:

*11. I also find force in the submission of the Ld Counsel for the appellant that figures reflected in Form 26AS cannot be used to determine Service Tax liability unless there is any evidence shown that it was due to a taxable service as held in Kush Constructions (supra). Also, figures shown to Income Tax authorities cannot be used*



to determine Service Tax as held in Synergy Audio Visual Workshop Pvt Ltd(supra) and Deluxe Enterprises(supra)

...  
14. Therefore, in view of the above discussions and decisions cited, the entire demand fails on merits as well as on limitation. Thus, there can be no imposition of Service tax, interest and penalty on the appellant. The impugned order cannot be sustained and is set aside. Accordingly, the appeal is allowed with consequential benefits.

8.5 Further, the Hon'ble CESTAT, Allahabad in the case of M/s Quest Engineers & Consultant Pvt. Ltd., Appellant Vs. Commissioner, Central Goods & Respondent Service Tax and Central Excise in Service Tax Appeal No. 70616 of 2019, pronounced on 28.09.2021 held that without any verification of the facts:

...  
12. Appreciating the facts and circumstances, we find that the allegations of Revenue are frivolous, that it was only on enquiry it came to know about the affairs of the appellant, i.e. providing of taxable service in view of the admitted facts that appellant is a registered assessee under the Service Tax provision, and have been filing their returns and paying tax. ... We further find that Form No. 26AS is not a statutory document for determining the taxable turnover under the Service Tax provisions. We find that form 26AS is maintained on cash/ receipt basis by the Income Tax Department for the purpose of tax deducted at source, etc. being the relevant data for Income Tax. Whereas under the Service Tax provisions, the service tax is chargeable on mercantile basis (accrual basis) on the service provided whether the value of such service is received or not. Thus, we find that the whole basis of show cause notice is incorrect and/or misconceived.

8.6. I find that, in all the above cases, the Hon'ble Tribunal has held that Form No. 26AS is not a statutory document for determining the taxable turnover under the Service Tax provisions. In this regard, I also refer to Para-3 of the CBIC Instruction dated 26.10.2021 wherein it is clearly instructed that:

Government of India  
Ministry of Finance  
Department of Revenue  
(Central Board of Indirect Taxes & Customs)  
CX & ST Wing Room No.263E,  
North Block, New Delhi,

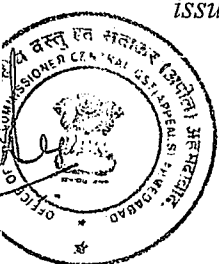
Dated- 21<sup>st</sup> October, 2021

To,  
All the Pr. Chief Commissioners/Chief Commissioners of CGST & CX Zone, Pr. Director General DGGI

Subject:-Indiscreet Show-Cause Notices (SCNs) issued by Service Tax Authorities-reg.

Madam/ Sir,

...  
3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner /Chief Commissioner (s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such



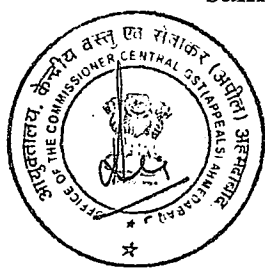
*cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee*

8.7. It is observed that the appellant had, during adjudication proceedings, submitted copies of Profit and Loss Account, Form 26 AS, Sales Ledger and ITR Form with 3CB/CD. No findings have been given by the adjudicating authority in respect of these statutory documents as well as the supporting Sales Ledger. Hence, the impugned order has been passed without appreciation of facts available on record.

8.8. In view of the discussions made above, judicial pronouncements and specific Instructions of the CBIC, I find that the impugned order has been issued mechanically, without proper appreciation of the facts and submissions of the appellant. Therefore, the findings arrived by the adjudicating authority are not legally sustainable, both on facts as well on merits.

9. I find that the appellant is a Proprietorship firm and engaged in providing services of "Transportation of goods by road". In terms of Notification No. 30/2012-ST dated 20.06.2012, they are eligible to be covered under Reverse Charge Mechanism. The dispute remains regarding the reconciliation of figures with the documents submitted by the appellant and arrive at the correct assessment. It is observed that the appellant have, during appeal proceedings, also submitted copies of Lorry Receipts (LRs) pertaining to the F.Y. 2014-15. Upon scrutiny of the LRs, it is observed that, during the relevant period, the appellant was engaged in the business of providing services as 'Goods Transport Agency' and hence covered under the Reverse Charge Mechanism (RCM) under Notification No. 30/2012-ST dated 20.06.2012. The LRs clearly mention that 'Service Tax would be paid by the consignee'. Hence, it would be in the interest of justice that the matter is remanded back to the adjudicating authority for conducting reconciliation of Income Tax data with the ST-3 Returns after examining the documents submitted by the appellant. The appellants are also directed to submit the relevant data before the adjudicating authority to arrive at correct assessment.

10. The appellant has also raised the issue of demand being hit by limitation. The same may also be examined by the adjudicating authority in the remand proceedings.



11. In view of the above discussions, keeping all the issues open, the impugned order is set aside and the appeal filed by the appellant is allowed by way of remand.

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.

*Akhil Kumar*  
22nd December, 2022.  
(AKHILESH KUMAR)  
Commissioner (Appeals)  
Dated: 22nd December, 2022

साक्ष्यकित/Attested:

(Somnath Chaudhary)  
Superintendent (Appeals),  
CGST, Ahmedabad.



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18, Gangotri Shopping Centre,  
Thol Road, Kadi,  
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Gujarat-382715

Copy to :

1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Principal Commissioner, CGST and Central Excise, Gandhinagar
3. The Deputy /Asstt. Commissioner, Central GST, Division- Kadi, Gandhinagar Commissionerate.
4. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication of OIA on website .
5. Guard file
6. PA File