



आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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By Regd. Post

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(क)	फ़ाइल संख्या / File No.	GAPPL/COM/GSTP/63/2022-APPEAL/6841-46
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-087/2022-23 and 30.12.2022
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	02.01.2023
(ङ)	Arising out of Order No. A/418/WZB/AHD/2C/12 dated 30.03.2012 passed by the Hon'ble CESTAT, WZB, Ahmedabad passed in respect of the Order-In-Original No. 55/JC(KS)/2010 dated 28.12.2010 passed by the Joint Commissioner, Central Excise, HQ, Ahmedabad-III (Now Gandhinagar Commissionerate)	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Janardan J. Raval, Vijay Guest House, Opp. Rajkamal Petrol Pump, Mehsana, Gujarat-384001

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:-

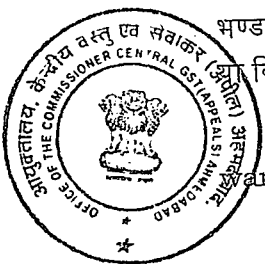
Revision application to Government of India:

(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, 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 :-

(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 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 मामलों 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd 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 संशोधित 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।

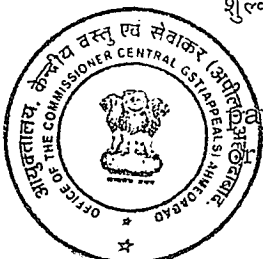
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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."



अपीलियअदेश / ORDER-IN-APPEAL

The present appeal has arisen out of Order No. A/418/WZB/AHD/2012 dated 30.03.2012 passed by the Hon'ble CESTAT, WZB, Ahmedabad (hereinafter referred to as "*CESTAT order*") in the case of M/s. Janardan J. Raval, Vijay Guest House, Opp. Rajkamal Petrol Pump, Mehsana, Gujarat (hereinafter referred to as "*the appellant*"). The CESTAT order has been passed in the matter arising out of the Order in Original No. 55/JC(KS)/2010 dated 28.12.2010 (hereinafter referred to as "*impugned order*") passed by the Joint Commissioner, erstwhile Central Excise, Commissionerate: Ahmedabad-III (hereinafter referred to as "*adjudicating authority*").

2. Briefly stated, the facts of the case are that the appellant was engaged in providing services of 'Cab Operator Service' and 'Tour Operator Service' and holding Service Tax Registration No. AABJF3043KST001. During the course of Audit of the records of the appellant for the period April-2006 to September - 2009 conducted by the officers of Internal Audit of the department, it was noticed that the appellant had hired out trucks to M/s ONGC, Mehsana. The 'Letter of Award' issued by M/s ONGC in this regard mentioned that "Right to use the said trucks lies with M/s ONGC, Mehsana for the specified period".

2.1 The said activity of the hiring /supply of Trucks to ONGC, Mehsana by the appellant appeared to fall under the category of "Supply of Tangible Goods Service", which was brought under the purview of Service Tax with effect from 16.05.2008. From the documents of the appellant, it was observed that they had received taxable value amounting to Rs. 36,81,110/- for the period 16.05.2008 to 31.03.2009 and Rs.71,06,609/- for the period F.Y.2009-10. However, they had neither obtained Service Tax Registration nor filed any Service Tax returns for the said service. Accordingly Show Cause Notice F.No.V.ST/15-116/Off/OA/2010 dated 14.10.2010 was issued to the appellant vide which it was proposed to demand and recover Service Tax amounting to Rs. 11,86,966/- alongwith interest and penalties under the provisions of Finance Act, 1994 (FA,1994).

3. The SCN was adjudicated vide the impugned order vide which the demand of service tax amounting to Rs. 11,86,966/- on the value of taxable services amounting to Rs. 1,07,87,719/- was confirmed along with interest. Penalty



amounting to Rs.5,000/- was imposed under Section 77 and Rs. 11,86,966 /- under Section 78 of the FA,1994 alongwith option for reduced penalty.

4. Being aggrieved with the impugned order, the appellant filed an appeal alongwith stay application before the then Commissioner (Appeals-III), Central Excise, Ahmedabad on following grounds:

- They had rendered services of transportation of goods to M/s ONGC, Mehsana as transport contractor which cannot be classified as a 'Supply of tangible goods service' as this fact was mentioned in the 'Contract letter of Award' issued by M/s ONGC.
- Services rendered by them were classifiable under the category of 'Goods Transport Operator Service' and as a consignee, ONGC, Mehsana was liable to discharge the Service tax liability under the category of GTA Service, which was mentioned in the 'Letter of Award' issued by M/s ONGC.
- They also contented on the ground of limitation as well as they contended that the Gross Taxable value arrived at by the adjudicating authority was incorrect and their actual income from transportation should be considered as Rs.70,04,555/- (Rs.36,81,110/- + Rs.33,23,445/-) .

5. The Commissioner (Appeals - III), Central Excise, Ahmedabad decided the Stay Order vide Order No. 09(Ahd-III)/2011 dated 07.03.2011 whereby the appellants were directed to deposit an amount of 25% of the service tax confirmed within 3 weeks. The appellants failed to comply with the conditions of the 'Stay Order' and they filed miscellaneous application dated 05.04.2011 for modification of Stay Order. Thereafter, the appeal was decided vide Order-in-Appeal No. 73/2011(Ahd-III)CE/KCG/Commr(A)/Ahd dated 12.04.2011, wherein the appeal filed by the appellant was dismissed for non-compliance provisions of Section 35F of the Central Excise Act,1944 read with Section 83 of the Finance Act, 1994.

6. Being aggrieved, the appellant preferred appeal before the Hon'ble CESTAT, WZB, Ahmedabad. The Hon'ble Tribunal has decided the case vide 'CESTAT order' wherein the Tribunal ordered that:

...

"3. After considering the submissions made by both sides and perusal of record, we find that appellant is hiring out 3 to 5 Ton capacity trucks to ONGC for transportation of their goods. The contract entered into with ONGC clearly



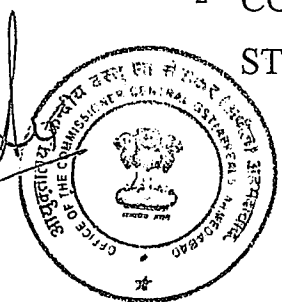
stipulate that ONGC shall bear the burden of service tax and deposit the same with the excise authority. It is also seen that ONGC has discharged the service tax liability on such services, under the head of Goods Transport Agency Services, while the demand has come on the current appellant, under this category of supply of tangible goods service. In our view, the question in this case is interpretation of classification of service rendered by the appellant and received by ONGC. In view of this, we consider the amount deposited by ONGC, as recipient of Goods Transport Agency service, as enough deposit for hearing and disposing the appeal. Accordingly, we set aside the impugned order and remit the matter back to the first appellate authority to reconsider the issue afresh after following the principles of natural justice. We make it clear that first appellate authority will decide the issue on merits without insisting on any further pre-deposit from the appellant. Appeal is allowed by way of remand."

7. In compliance of the above order of the Hon'ble CESTAT, the appeal was admitted and the appellants were informed about the same.

8. Personal hearing in the case was conducted on 16.12.2022. Shri Vipul Khandhar, Chartered Accountant, appeared for hearing as authorized representative of the appellant. He submitted a written submission during the hearing and re-iterated the submissions made therein.

8.1 In their written submission submitted during hearing, the appellants contended that the services provided by them to ONGC, Mehsana are correctly classifiable under the 'Goods Transport Agency Service', with ONGC as the Service recipient and as per the provisions of their contract with ONGC, Mehsana, the burden of Service Tax lies on M/s ONGC, Mehsana and not on the appellant. They also contended the calculation error in computation of the demand, which was contended by them earlier, and also the aspect of limitation in confirming the demand by the adjudicating authority. In support of their contentions, they relied the following citations:

- Decision of the Hon'ble Supreme Court of India in the case of Pushpam Pharmaceutical Company Vs. Collector of Central Excise Bombay [1995 Supp (3) SCC 462]
- CCE, Bhopal Vs. Thyrocare Services [2006(4) STR 200 (Tri.Del.)]
- CCE, Jaipur Vs Sikar Ex-servicemen Welfare Co-op. Soc. Ltd. [2006 (4) STR 213 (Tri.Del)]



- Suri Colour Labs (P) Ltd. Vs CCE, Meerut-II [2006(4) STR 96 (Tri. Del)]
- Surat Municipal Corpn. Vs CCE, Surat [2006 (4) STR 44 (Tri.Del.)]
- BST Ltd. Vs CCE, Cochin [2006 (4) STR 40 (Tri.Bang.)]
- Cosmic Dye Chemicals Vs CCE, Bombay [1995 (75) ELT 721 (SC)]
- CCE, Ludhiana Vs Silver oak Gardens Resort [2008 (9) STR 481 (Tri.Del)]
- Arvind Motors Vs. CCE, Raipur [2008(9) STR 464 (Tri.-Del.)]
- ETA Engineering Ltd. Vs Chennai [2003 (3) STR 429 (Tri.LB)]
- Smitha Shetty Vs CCE, Bangalore [2003 (156) ELT 84 (Tri.Bang.)]
- Cement Marketing Co. – 1980 (6) ELT 295 (SC);
- CCE, Mumbai-IV Vs. Damnet Chemicals P.Ltd [2007 (216) ELT 3 (SC)]
- CC Vs. Seth enterprises [1990 (49) ELT 619 (Tri.Del)]

9. I have gone through the facts of the case, the impugned order, Order-In-Appeal dated 12.04.2011 as well as submissions of the appellant. I find that the present appeal has arisen in terms of the remand order of the Hon'ble CESTAT, WZB, Ahmedabad. The issue to be decided in the present case is whether the impugned order passed by the adjudicating authority, confirming the demand of service tax amounting to Rs.11,86,966 /- under 'Supply of tangible goods service' under Section 65(105) (zzzzj) of the Finance Act, 1994 alongwith interest and penalty, is legal and proper or otherwise. The demand pertains to the period from 16.05.2008 to F.Y. 2009-10.

10. It is observed from the case records that the appellant had given on hire 08 trucks to the M/s ONGC, Mehsana. On perusal of one of the contracts bearing No. MHN/MM/LGTS/CONTRACT/287/07-08/03 dated 24.09.2008, it is observed that the same pertains to hiring of 01 number of 09-10 MT capacity truck for three years from the date of commencement of service. The rate of hiring per truck is Rs. 600 per day and per KM rate is Rs. 13.50. The contract also mentions that M/s ONGC will bear the burden of Service Tax and deposit the same with Excise authorities. It is the contention of the department that the activity of the appellant are covered under the service category of supply of tangible goods under Section 65(105) (zzzzj) of the Finance Act, 1994 and was taxable w.e.f. 16.05.2008. On the other hand, it has been contended by the appellant that they had provided



services in the nature of Goods Transport Agency and that the liability of payment of service tax was on the ONGC as service recipient. It is also observed that M/s ONGC has discharged the service tax liability on the said services under the head of Goods Transport Agency Services, which is apparent from Para 3 of the Hon'ble Tribunal's order in the case.

11. It would be relevant to refer to the definition of the supply of tangible goods service under Section 65 (105) (zzzzj) of the Finance Act, 1994 which reads as under:

“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.

11.1. Further, the CBEC vide M.F. (D.R.) letter F. No. 334/1/2008 dt.29.02.2008 has explained the scope of Supply of Tangible Goods for Use service as under:

Transfer of the right to use any goods is leviable to sales tax/ VAT as deemed sale of goods [Article 366(29A)(d) of the Constitution of India]. Transfer of right to use involves transfer of both possession and control of the goods to the user of the goods.

(2) Excavators, wheel loaders, dump trucks, crawler carriers, compaction equipment, cranes, etc., offshore construction vessels & barges, geo-technical vessels, tug and barge flotillas, rigs and high value machineries are supplied for use, with no legal right of possession and effective control. Transaction of allowing another person to use the goods, without giving legal right of possession and effective control, not being treated as sale of goods, is treated as service.

(3) Proposal is to levy service tax on such services provided in relation to supply of tangible goods, including machinery, equipment and appliances, for use, with no legal right of possession or effective control. Supply of tangible goods for use and leviable to VAT / sales tax as deemed sale of goods, is not covered under the scope of the proposed service. Whether a transaction involves transfer of possession and control is a question of facts and is to be decided based on the terms of the contract and other material facts. This could be ascertainable from the fact whether or not VAT is payable or paid.

11.2. It is observed that in order to fall under this service category, there must not be any transfer of right of possession of the goods from the service provider to the service recipient and that there must not be any transfer of effective control of the



goods from the service provider to the service recipient. It is apparent from the contract dated 24.09.2008 that the trucks have been given on hire to M/s ONGC for the period of contract and the rates have been fixed on daily basis as well as on per Km basis. The vehicle has been given on hire alongwith driver and cleaner, and their night halt charges are specifically provided in the contract. Hence, the right of possession and effective control over the truck remains with M/s ONGC for the period of contract and thereby the essential ingredients of supply of goods without transferring right of possession and effective control of such goods is not satisfied in the instant case. Therefore, in my considered view, the services provided by the appellant by giving trucks on hire to M/s ONGC in the instant case do not fall under the service category of supply of tangible goods under Section 65 (105) (zzzzj) of the Finance Act, 1994.

11.3. It is observed that the Hon'ble Tribunal, Mumbai, in the case of Satish Kumar & Co Vs. Commissioner of Central Excise, Nagpur, reported as 2019 (22) GSTL 269 (Tri. – Mumbai), dealt with identical matter and held as under:

3. We have carefully considered the submissions made by both sides and perused the records. We find that the Revenue has demanded the Service Tax on the renting of trucks under the head of "Supply of Tangible Goods Service". As per the facts of the case which is not in dispute, we note that the appellant have given the trucks to the lessees on monthly rental charges. The appellant did not provide any facility such as driver, repair and maintenance, fuel etc. Once the truck is rented out the entire possession and control is of the lessees and during the renting period there is no interference of the appellant. The adjudicating authority analyse the legal provision which is given in para 5.7 is reproduced below :-

"5.7 That, from the analysis of above provision it becomes clear that in order to attract levy of tax under "Supply of Tangible Goods Service" following three ingredients must be present :-

- (a) The service essentially has to be in relation to supply of tangible goods to any person by any other person;
- (b) There must not be any transfer of right of possession of the goods from the service provider to the service recipient;
- (c) There must not be any transfer of effective control of the goods from the service provider to the service recipient.

Hence if all the above 3 conditions are fulfilled in a commercial transaction than only it would be liable to Service Tax."



From the above observation of the adjudicating authority, he himself laid down 3 criteria for classification under "supply of tangible goods service". As discussed above, the right of possession of the goods and effective control have been transferred from the service provider to service recipient. Therefore the ingredient (b) & (c) observed by the adjudicating authority are absolutely incorrect. If that be so the test for classifying the service under "Supply of Tangible Goods Service" fails. Admittedly during the lease period of truck the right of possession of truck and effective control have been transferred to service recipient, therefore the service does not fall under the "Supply of Tangible Goods Service". Accordingly the demand does not sustain."

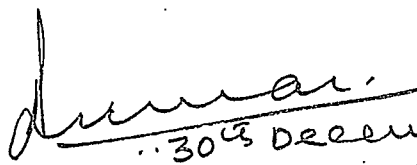
11.4: Similar view has been taken by the Hon'ble CESTAT, Chandigarh in the case of Sant Roadlines Vs. Commissioner of Central Excise and Service Tax, Panchkula 2020 (43) GSTL 206 (Tri. – Char.)

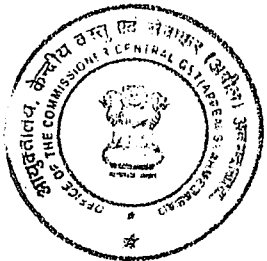
11.5. In view of the discussions made above and the judicial pronouncements of the Hon'ble Tribunal in similar sets of facts, I am of the considered view that the services provided by the appellant in this case do not get covered under the service category of supply of tangible goods under Section 65 (105) (zzzzj) of the Finance Act, 1994. Hence, the demand confirmed in the instant case vide the impugned order is not legally sustainable and is liable to be set aside. When the demand fails to sustain, there is no question for liability of interest as well as of imposition of penalty. Hence, they are also set aside.

12. Since the demand is not legally sustainable, the other contentions of the appellant regarding the issue of calculation error in quantifying the demand of Service Tax and of limitation are not being discussed.

13. In view of the discussions made above, the impugned order is set aside as being not legal and proper and the appeal filed by the appellant is allowed with all consequential reliefs.

14. 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.


30th December,
(AKHILESH KUMAR) 2022.
Commissioner (Appeals)
Date: 30th December, 2022



Attested:

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

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To

M/s.Janardan J. Raval,

Vijay Guest House,

Opp. Rajkamal Petrol Pump,

Mehsana, Gujarat

Copy to:

1. The CESTAT, WZB, Ahmedabad
2. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
3. The Principal Commissioner, CGST, Gandhinagar
4. The Additional Commissioner, CGST, Gandhinagar.
5. The Assistant Commissioner (System), CGST, Appeals, Ahmedabad.
(for uploading the OIA)

✓ 6. Guard File.

7. P.A. File.



