



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeals Ahmedabad Commissionerate  
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| (क) | फाइल संख्या / File No.  | GAPPL/COM/STP/2638/2022-APPEAL / 774-78  |
| (ख) | अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date   | AHM-EXCUS-003-APP-011/2023-24 and 21.04.2023   |
| (ग) | पारित किया गया / Passed By  | श्री अखिलेश कुमार, आयुक्त (अपील)<br>Shri Akhilesh Kumar, Commissioner (Appeals)  |
| (घ) | जारी करने की दिनांक / Date of issue   | 25.04.2023   |
| (ङ) | Arising out of Order-In-Original No. 04/AC/DEM/MEH/ST/Pasabhai B Patel/2022-23 dated 19.05.2022 passed by the Assistant Commissioner, CGST, Division-Mehsana, Gandhinagar Commissionerate |  |
| (च) | अपीलकर्ता का नाम और पता / Name and Address of the Appellant   | M/s Pasabhai B Patel Service Station (PAN - AACFP0903D), 1, Shankar Estate, Opp. Umiyanagar Society, Mehsana, Gujarat-384002 |

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 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 भीतर मूल-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 होते रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम 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.

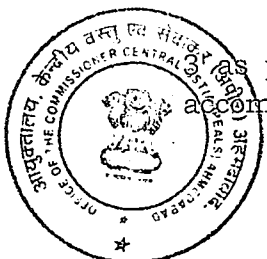
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 पढ़ी 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 रु 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।

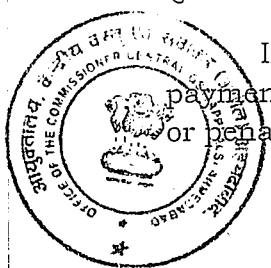
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

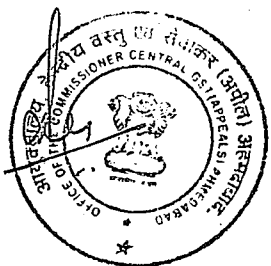


अपीलिय आदेश/ ORDER-IN-APPEAL

This Order arises out of an appeal filed by M/s. Pasabhai B Patel Service Station, 1, Shankar Estate, Opp. Umiya Nagar Society, Mehsana, Gujarat - 384002 [hereinafter referred to as "the appellant"] against Order-in-Original No. 04/AC/DEM/MEH/ST/Pasabhai B Patel/2022-23 dated 19.05.2022 [hereinafter referred to as "the impugned order"] passed by the Assistant Commissioner, CGST & Central Excise, Division: Mehsana, Gandhinagar Commissionerate [hereinafter referred to as "the adjudicating authority"].

2. Facts of the case, in brief, are that the appellant were engaged in providing services and is having PAN No. AACFP0903D. The Income Tax department had provided data/details of various firms/companies/persons who had declared in their Income Tax Returns to have earned income by providing services classified under various Service Sectors like Contractors, IT enabled services, Professionals, Software Development, Commission Agent and Supply of Tangible Goods etc. The data pertained to the period F.Y. 2014-15 to F.Y. 2017-18 (upto June-2017). The name of the appellant firm also appeared in the said data received from Income Tax department. As the appellants were not registered with the Service Tax department, letter/email was issued to them vide letter F.No. IV/16-29/PI/Un-R/2020-21/Gr.III dated 08.07.2020 requesting them to provide copies of IT Returns, Form 26AS, Balance Sheet, VAT/ST Return, Annual Bank Statement, Contracts/agreements entered with the service receivers etc. for the period F.Y. 2014-15 to F.Y. 2017-18 (upto June-2017).

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. The appellants vide letter dated 13.07.2020 submitted copies of IT Returns, Form 26AS, Balance Sheet, VAT / ST Returns, Annual Bank Statement, Contracts/Agreements entered into with the Service Receivers during the period F.Y. 2014-15 to F.Y. 2017-18 (upto June-2017). From the documents submitted by the appellant, it appeared that the appellants were engaged in providing taxable services of 'Transporting Petroleum products as per LOI/Work Order issued by M/s Bharat Petroleum Corporation (BPCL). From the copies of contracts/agreements entered into with BPCL, it was evident that they provided 2



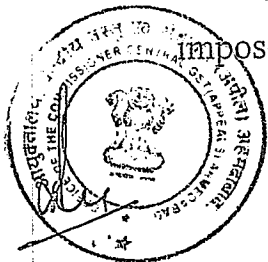
Tanker Lorries for transportation of Petroleum products as per LOI/Works Order issued by BPCL from Sidhpur, Gujarat to company outlet at various places. The appellants were responsible for payment of all taxes/levies/any new-levies and bear other running costs. They expressed their inability to produce copies of Invoices raised by them, but they submitted that they had provided services exclusively to BPCL, who had deducted TDS which was reflected in their Form 26 AS.

2.2 On the basis of the information provided by the appellants considering the statutory provisions of the Finance Act, 1994 and Rules prevalent from time to time, it appeared to the jurisdictional officers that the appellants have received consideration from BPCL on per trip basis, which was inclusive of fuel & lubricants consumed, driver & cleaner wages, vehicle repairs, maintenance, insurance, RTO charges, personal insurance etc. and all statutory liabilities such as P.F., Bonus, Gratuity, leave wages, workmen compensation etc. Hence, the taxable services provided by the appellants were classified under 'Supply of Tangible Goods as classified under erstwhile Section 65 B (51) of the FA, 1994 and are liable to service tax under Section 66 of the FA, 1994. The quantum of service tax was calculated on the basis of details submitted by the appellants in their Books of Account as detailed in the table below :

| Table                       |  | (Amount in Rs.)     |                   |
|-----------------------------|--|---------------------|-------------------|
| Financial Year (F.Y.)       | Value (taking higher of 26AS or P&L A/C) | Rate of Service Tax | Total Service Tax |
| 2014-15                     | 15,21,892/-                              | 12.36 %             | 1,88,105/-        |
| 2015-16                     | 13,58,034/-                              | 14 %                | 1,90,125/-        |
| 2016-17                     | 11,75,603/-                              | 14.5 %              | 1,70,607/-        |
| 2017-18<br>(upto June-2017) | 7,36,442/-                               | 15 %                | 1,10,466/-        |
| Total                       | 47,92,971/-                              |                     | 6,59,303/-        |

2.3 The appellant were issued Show Cause Notice No. IV/16-29/PI/TPI/Un-R/2020-21/Gr.III dated 28.09.2020 demanding Service Tax amounting to Rs. 6,59,303/- under proviso to Section 73 (1) of Finance Act, 1994 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(2) and Section 78 of the Finance Act, 1994.

3. The SCN was adjudicated vide the impugned order wherein the demand of Rs. 6,59,303/- was confirmed alongwith interest. Penalty of Rs.10,000/- was imposed under Section 77(2) of the Finance Act, 1994. Penalty of Rs. 6,59,303/-



was imposed under Section 78(1) of the Finance Act, 1994 with option for reduced penalty in terms of clause (ii) of Section 78(1) of the FA, 1994.

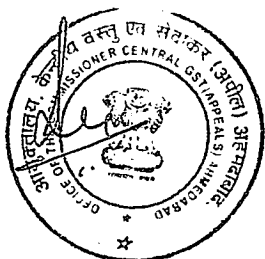
4. Aggrieved by the impugned order, the appellant have preferred this appeal on following grounds:

(i) They were engaged in the business of transportation of petroleum products and not providing tank lorries on rent. Entire responsibility of safe transportation of the petroleum products were vested with them and not the service receiver. Costs of running and maintenance, fuel, salary of driver, insurance etc were borne by them and not by BPCL. These clearly suggest that they have been providing services of transportation of petroleum products and not hiring, leasing or renting of liquid tankers.

(ii) They had submitted many evidences before the adjudicating authority in support of their contention including certificate issued by BPCL that the Service Tax was paid by them on Reverse Charge basis. However, the impugned order has been passed considering the services as 'Supply of tangible goods' and not transportation service. As per the conditions of the definition as per Entry No. (f) of Section 66E of the Finance Act, 1994, they have never transferred the goods i.e their lorries to the service receiver, further, they have issued 'Consignment Note' for every transportation service provided by them and transportation charges were collected from the service receiver on the basis of distance. Therefore, the services provided by them would properly classified under 'Transportation of Goods by road under GTA' and the service tax liability is on BPCL (as service receiver) on RCM basis.

(iii) In support of their contention they referred to the conditions of the contract dated 25.06.2013 entered into with M/s BPCL. Any loss, shortage or damage to the goods being transported (petroleum products) would be recovered from the appellants, as BPCL would not bear the same.

(iv) The certificates given by BPCL further confirm that Service Tax liability has been discharged by BPCL in terms of Reverse Charge



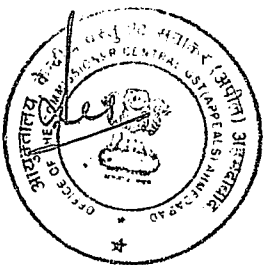
Mechanism. Therefore, Service Tax cannot be demanded again as it has been discharged for the said taxable value during the relevant period. They relied on the decision of the Hon'ble CESTAT, Ahmedabad in the case of Navyug Alloys Pvt. Ltd. Vs Commr. of Cen. Excise & Customs – [2009 (13) STR 421 (Tri.Ahmd)] and decision of the Hon'ble CESTAT, Mumbai in the case of Umasosn Auto Compo Pvt.Ltd Vs Commissioner of C.Ex. [2016 (46) STR 405 (Tri.-Mumbai)].

(v) The period covered in the SCN is F.Y. 2014-15 to F.Y.2017-18 (upto June-2017). However, while calculating the demand for the F.Y. 2017-18, the department has quantified the demand for the entire period of F.Y. 2017-18 instead of the period of April-2017 to June-2017. Considering the amount shown in the Form 26AS, they submitted a tabulated details as below :

| Financial Year (F.Y.)             | Value as per SCN (April-2017 to March-2018) (in Rs.) | Value as per Form -26 AS (April-2017 to June-2017) (in Rs.) | Service Tax demand as per SCN (in Rs.) | Correct Service Tax demand (in Rs.) | Excess Service Tax demanded and confirmed. (in Rs.) |
|-----------------------------------|--|---|--|-------------------------------------|---|
| 1                                 | 2  | 3   | 4                                      | 5                                   | 6   |
| 2017-18 (April-2017 to June-2017) | 7,36,442/-   | 1,72,990/-  | 1,10,466/-                             | 25,950/-                            | 84,516/-  |

Hence, an amount of Rs. 84,516/- has been demanded in excess due to calculation error.

(vi) As the Service Tax for the relevant period has already been paid by BPCL, therefore, charging suppression and invoking extended period is not valid. Further, they also contended that at para-22.1 of the impugned order, the adjudicating authority has mentioned that the appellants have not issued any consignment notes to BPCL. Whereas at Para-22.3 of the impugned order, the conditions of the contract clearly shows that 'Issuing of Consignment Notes' by the appellant was a pre-condition in the contract. Penalty has been wrongly imposed under Section 78(1) of the Finance Act, 1994 as there is no suppression on part of the appellant.



5. Personal Hearing in the case was held on 15.03.2023. Mr. Punit Prajapati, Chartered Accountant, appeared for personal hearing on behalf of the appellant. He re-iterated submissions made in the appeal memorandum.

6. I have carefully gone through the facts of the case available on record, grounds of appeal in the appeal memorandum, 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, confirming the demand of service tax amounting to Rs. 6,59,303/- 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 in the facts and circumstances of the case. The demand pertains to the period F.Y. 2014-15 to F.Y.2017-18 (upto June-2017).

7. It is observed that the appellant is a Proprietorship firm and not registered with the service tax department. They are engaged in providing services of 'Transportation of Petroleum Products' to M/s BPCL (body corporate). The SCN in this case was issued on the basis of data received from the Income Tax Department, which showed that the appellant had earned income amounting to Rs. 47,92,971/-, which was shown as Income from service in their Income Tax returns during the relevant period. The service tax liability was determined on this amount of Rs. 47,92,971/- classifying the service provided by the appellant under 'Supply of Tangible Goods'. It is the contention of the appellant that were engaged in providing services by way of "Transportation of Goods/GTA" to M/s BPCL during the relevant period F.Y. 2014-15 to F.Y. 2017-18 (upto June-2017). It has been further contended that in the instant case by virtue of Notification No. 30/2012-ST dtd.20.06.2012, the liability of Service Tax lies with the service receiver under Reverse Charge Mechanism (RCM) basis. Further, M/s BPCL has certified that they have paid the Service Tax during the relevant period under RCM.

7.1 It is observed that the SCN in question was issued based on the data received from the Income Tax department. The Service Tax liability has been determined after considering the reply submitted by the appellant. Further, I find that alongwith their reply dated 13.07.2020, the appellant had submitted documents i.e





copies of Income Tax Returns, Form 26AS, Balance Sheet and P&L Account, VAT/ST Returns, Annual Bank Statement, Contracts/Agreements entered into with the Service Receivers during the period F.Y. 2014-15 to F.Y. 2017-18 (upto June-2017). It is also observed that the submissions made by the appellant were found to be not tenable and the SCN was issued classifying the services provided them under 'Supply of Tangible Goods' under Section 65(105) (zzzzj) of the Finance Act, 1994 (upto 30.06.2012) and under Section 65B(51) of the Finance Act, 1994.

8. It is observed that during the relevant period, the taxability of the service proposed in the SCN was covered under Declared 'Service' defined in terms of Section 66E(f) of the Finance Act, 1994, as amended. The relevant portion reads as under :

**SECTION 66E. Declared services.** — *The following shall constitute declared services, namely:—*

(a) *renting of immovable property*

...  
(e) *agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;*

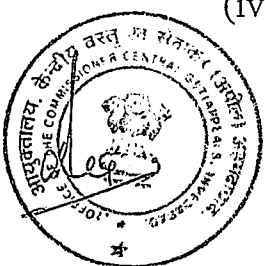
(f) *transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods;*

According to the above definitions, it is inferred that, for any service to be classified as 'Declared Service' in terms of Section 66E (f) of the Finance Act, 1994 :

- (i) The service is provided in relation to transfer of goods,
- (ii) The transfer is without transferring right to use such goods,
- (iii) The service may be provided by any person to any other person.

8.1 The appellants have contended that their services are correctly classifiable under "Goods Transport Agency (GTA)" service. In terms of Section 65 B (26) of the Finance Act, 1994 (as amended), "*Goods Transport Agency (GTA) means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called*". As per this definition, an entity is considered as goods transport agency for purposes of recovery service tax when :

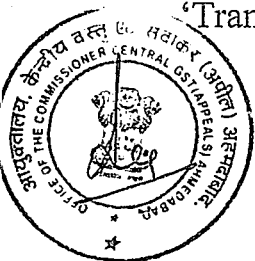
- (i) It is any person;
- (ii) Who provides service in relation to transport of goods;
- (iii) It is transporting goods by road; and
- (iv) It issues consignment note.



8.2 It is observed that the appellants have entered into a an Agreement dated 25.06.2013 with M/s BPCL for rendering services to them and the terms and conditions of the said contract specifies that :

- (i) the appellants are referred to as 'Carrier' and BPCL as 'Company' in the said contract.
- (ii) the appellants are required to supply 02 No. of Liquid Tanker Lorries of capacity 12 Kiloliters.
- (iii) The tanker lorries would be in possession and control of the appellant/carrier and would be utilized for Road Transportation of bulk petroleum products manufactured and stored by BPCL at their 'Sidhpur' location to customers/other storage points as per the LOI/Work order.
- (iv) Maintenance of the tanker lorries would be vested with the carrier and certain standards were specified in the contract which are required to be maintained by the carrier. The crew of the tanker lorries should be provided by the carrier and should given specific uniform to be worn during the period of service.
- (v) Company will pay to the carrier for the transportation work undertaken as per the LOI/work order. The transport charges payable would be based on the shortest route approved by the company on round trip basis (called as RTKM).
- (vi) The Carrier would provide Consignment notes for each consignment loaded on a daily basis to the loading location.
- (vii) The agreement is valid for 02 years.

8.3 On analysis of definitions of 'Declared Service' in terms of Section 66E (f) of the Finance Act, 1994 and 'Goods Transport Agency (GTA) service' supra, with the specifications of the 'Contract' entered into by the appellant with M/s BPCL, I find that during the relevant period the appellants are engaged in providing services to BPCL pertaining to 'Transportation of Petroleum Products' in bulk by road from one place to another using Tanker Lorries which are owned/controlled and maintained by the appellants. Further, they were required to issue consignment note for every trip on daily basis. As there was no transfer of goods in the services provided by the appellant and payments were made to the appellants for the 'Transportation work' only, therefore, it is established that, the services provided



by the appellant would be appropriately classified under 'Goods Transport Agency (GTA) service'. The adjudicating authority has confirmed the demand vide the impugned order by wrongly classifying the services under 'Supply of Tangible Goods service', which has rendered the impugned order legally incorrect and liable to be set aside.

9. I further find that since the services provided by the appellant are categorized under 'Goods Transport Agency (GTA) service' the liability of payment of Service Tax is on the service recipients in terms of Sr.No.2 of the Table to Notification No. 30/2012-ST dated 20.06.2012 as the provisions of the notification envisages that 100% Service Tax is required to be paid by the recipient of service under Reverse Charge Mechanism. The documents submitted by the appellant in the appeal memorandum contains Certificates issued by Bharat Petroleum Corporation Limited (BPCL) confirming that they had discharged the service tax liabilities on behalf of the appellants under Reverse Charge Mechanism during the period F.Y. 2014-15 to F.Y. 2016-17 (upto June-2017). The details of the service tax paid by them were as under :

| Period (F.Y.)             | Amount of Service Tax paid (in Rs.) |
|---------------------------|-------------------------------------|
| 2014-15                   | 45,671.75/-                         |
| 2015-16                   | 73,606.03/-                         |
| 2016-17                   | 12,355.25/-                         |
| 2016-17 (Oct.'16-Mar.'17) | 14,514.95/-                         |
| 2017-18 (Upto June-2017)  | 8,347.34/-                          |

However, the adjudicating authority has not considered the submissions of the appellant and denied the benefit of payment under reverse charge to them in as much as that, he has wrongly classified the services provided under supply of tangible goods. Therefore, the impugned order is legally incorrect and liable to be set aside.

10. In view of the discussions made above, I am of the considered view that the during the relevant period, the services provided by the appellant merits classification under 'Goods Transport Agency (GTA) service' and by virtue of Notification No. 30/2012-ST dated 20.06.2012, they are not liable to pay Service Tax, as the leviable Service Tax has been paid by the service receiver (BPCL) under Reverse Charge Mechanism. Therefore, the demand of service tax



amounting to Rs. 6,59,303/- confirmed vide impugned order is set aside. As the demand fails to sustain, question of interest and penalty does not arise.

11. In view of the above discussions, the impugned order is set aside and the appeal filed by the appellant is allowed.

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.

*(Signature)*  
21st April, 2023..  
(AKHILESH KUMAR)  
Commissioner (Appeals)

Dated: 21<sup>st</sup> April, 2023



साक्ष्यंकित/Attested:

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

By REGD/SPEED POST A/D

To,

M/s. Pasabhai B Patel Service Station,  
1, Shankar Estate, Opp. Umiya Nagar Society,  
Mehsana, Gujarat - 384002

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- Mehsana ,  
Gandhinagar Commissionerate.
4. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication  
of OIA on website .
5. Guard file
6. PA File