



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 SPEED POST

DIN:- 20231064SW000000AAC1

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/3011/2023-APPEAL / JSN 2-46
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-113/2023-24 and 25.10.2023
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील्स) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	26.10.2023
(ङ)	Arising out of Order-In-Original No. AHM-CEX-003-ADC-PBM-032-21-22 dated 30.03.2022 passed by the Additional Commissioner, CGST, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Manojkumar Mohanlal Bhatia, G-No-303, G-10C, Sector-28, Gandhinagar, Gujarat-382028

कोई व्यक्ति इस अपील-आदेश से असंतोष 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 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 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-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. Registrar of a branch of 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 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 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।

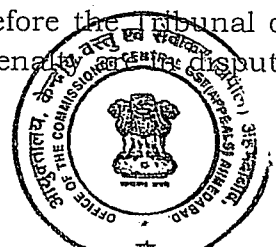
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



अपीलिय आदेश / ORDER-IN-APPEAL

The present appeal has been filed by M/s Manojkumar Mohanlal Bhatia, G-No-303, G-10C, Sector-28, Gandhinagar, Gujarat-382028 [Old address : K-7, Near Balsansar School, Pithapur, Gandhinagar, Gujarat – 380016] (hereinafter referred to as “*the appellant*”) against Order in Original No. AHM-CEX-003-ADC-PBM-032-21-22 dated 30.03.2022 [hereinafter referred to as “*impugned order*”] passed by the Additional Commissioner, CGST and Central Excise, Commissionerate: Gandhinagar [hereinafter referred to as “*adjudicating authority*”].

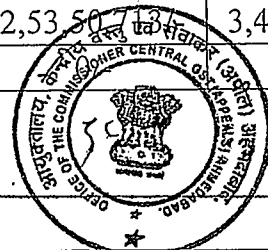
2. Briefly stated, the facts of the case are that the appellant were not registered under Service Tax, were holding PAN No. AREPB9149A. As per the information received from the Income Tax department, discrepancies were observed in the service income declared in Income Tax Returns/26AS, in order to verify the said service income as well as to ascertain the fact whether the appellant had discharged their Service Tax liabilities during the period F.Y. 2015-16 & F.Y. 2016-17, letters dated 07.04.2021 and 13.04.2021 were issued to them by the department. However, the appellant didn't submit any reply regarding non-obtaining the service tax registration but only furnished the 26AS and ITR for the F. Y. 2015-16 to F.Y. 2016-17. Further, it was observed that the nature of services provided by the appellant were covered under the definition of ‘Service’ as per Section 65B(44) of the Finance Act, 1994 , and their services were not covered under the ‘Negative List’ as per Section 66D of the Finance Act, 1994. Further, their services were not exempted vide the Mega Exemption Notification No.25/2012-S.T., dated 20.06.2012 (as amended). Hence, the services provided by the appellant during the relevant period were considered taxable.

3. In the absence of any other available data for cross-verification, the Service Tax liability of the appellant for the F. Y. 2015-16 to F.Y. 2016-17 were determined on the basis of value of ‘Sales of Services under Sales/Gross Receipts from Services (Value from ITR)’ as provided by the Income Tax department. The ‘Taxable Value’ was considered what the appellant had declared in the Income Tax Returns. Details are as under:-

Table-A

(Amount in Rs)

Sr. No	Details	F. Y. 2015-16	F. Y. 2016-17
1	Taxable Value as per Income Tax Data	2,53,50,713/-	3,47,99,585/-
2	Taxable Value declared in ST-3 return		0/-



3	Difference of value	2,53,50,713/-	3,47,99,585/-
4	Amount of Service Tax along with Cess (@14 % including Cess for F.Y. 2015-16 & @15% including Cess for F.Y. 2016-17) not paid / short paid	36,75,853/-	52,19,937/-
	Total	88,95,790/-	

3. Show Cause Notice No. ADC-PMR-016/21-22 dated 22.04.2021 (in short 'SCN') was issued to the appellant wherein it was proposed to:

- Demand and recover service tax amounting to Rs.88,95,790/- under the proviso to Section 73 (1) of the Finance Act, 1994 alongwith Interest under Section 75 of the Finance Act, 1994 ;
- Impose penalty under Section 77(1)(a), 77(1)(b), 77(1)(c)(i), 77(1)(c)(ii) & 78 of the Finance Act, 1994;

4. The SCN was adjudicated *ex-parte* vide the impugned order wherein the demand for Rs.88,95,790/- was confirmed under Section 73 (1) of the Finance Act, 1994 alongwith interest under Section 75 of the Finance Act. 1994. Penalty amounting to Rs.88,95,790/- was imposed under Section 78 of the Finance Act, 1994. Penalty of Rs. 10,000/- were imposed under Section 77(1)(a), 77(1)(b), 77(1)(c)(i), 77(1)(c)(ii) of the Finance Act, 1994 respectively.

5. Being aggrieved with the impugned order, the appellant have filed the present appeal alongwith application for condonation of delay on following grounds :

- The appellant is having PAN AREPB9149A and owning Goods carriage Transport vehicles and engaged in the Business of providing their vehicles on hire to M/s Transport Corporation of India Limited and M/s TCI Express Limited who are GTA service providers. For the said purpose, the appellant owns total 9 Trucks/Goods carriage vehicles of different model and capacity as it could be evident from the various RC Books are enclosed. The appellant is collecting hiring charges by way of issuing vehicle wise Trip sheets to their clients viz. M/s Transport Corporation of India Limited and M/s TCI Express Limited.
- The appellant is giving their trucks on hire as a ~~solely~~ ^{for} Transportation of Goods by road to solely to M/s Transport Corporation of India Limited and



TCI Express Limited, who are GTA Service providers. This being the case they are not issuing consignment notes, instead they are receiving consideration based on the agree rate per trip depending upon the kilometers between destination of loading of goods and its unloading at the destination for which the appellant raises Trip Sheets to their customers.

- The said activity is covered as exempted service in terms of Sr. No.22 of Notification No.25/2012-ST and also in clause (p) of Negative list specified in Section 66D of the Finance Act, 1994 and accordingly they are not liable to pay service tax and not liable to be registered.
- Reason for delay in filing an appeal :
 - ❖ The appellant came to know about issuance of show cause notice and impugned ex-parte order during the process of cancellation of their GSTIN and its revocation process. Subsequently on stern persuasion with the respective Service Tax authority, the appellant was able to get copy of show cause notice and impugned order only on 30.05.2022 considering the date of communication as 30.05.2022, there occurred delay in filing the present appeal around one year.
 - ❖ In this regard the appellant have filed separate application for Condonation of delay along with this appeal. The appellant submitted that there is no ill-intention behind filing the present appeal as the delay occurred on account of various reasons mentioned in the COD application and requested to consider the circumstances as a whole and admit the appeal for consideration.
- The appellant submitted that they have not received show cause notice, nor any communication letter No. CGST/R-III/25/Unregistered/20-21 dated 07.04.2021 and reminder 13.04.2021 referred in the show cause notice; not received any communication scheduling personal hearing on 13.01.2022, 23.02.2022 and 24.03.2022 as mentioned in the impugned order. The appellant contend that none of the communications were served in the manner prescribed in Section 37C of the Central Excise Act, 1944 made applicable to service tax matter vide Section 83 of the Finance Act, 1994. This being the case the appellant could not responded to any correspondences referred herein above and could not attend the personal hearing on the scheduled dates.



- Pre-Consultation notice before issuance of Show cause notice was not given to the appellant, instead the same is issued only on assumption and presumption. The issuance of show cause notice issued in sheer disregard of Circular No. para 5 of Circular No. 1053/2/2017-CX., dated 10-3-2017. Such a show cause notice is not sustainable as held by the judiciaries across the country. They relied upon the judgements of Hon'ble Courts in case of :
- Dharamshil Agencies vs Union of India reported at 2021 (55) G.S.T.L. 516 (Guj.);
 - Amadeus India Pvt. Ltd vs Pr. Commr. Of C.Ex. & ST & Central Tax reported at 2019 (25) G.S.T.L. 486 (Del.);
- The impugned show cause notice was issued demanding service tax of Rs. Rs.88,95,790/- besides proposing various penalties. Such type of indiscreet show cause notices are issued across India. Taking note of it, CBIC later on have also issued circular on 26.10.2021 citing same position wherein such types of indiscreet notices was restricted to be issued.
- As submitted herein above grounds of appeal, the appellant have not received any of the three communications scheduling the personal hearing as prescribed Section 37C read with Section 33A of the Central Excise Act, 1944, Section 33A provides as under.

SECTION 33A. Adjudication procedure. – (1) The Adjudicating authority shall, in any proceeding under this Chapter or any other provision of this Act, give an opportunity of being heard to a party in a proceeding, if the party so desires.

(2) The Adjudicating authority may, if sufficient cause is shown, at any stage of proceeding referred to in sub-section (1), grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during the proceeding.]

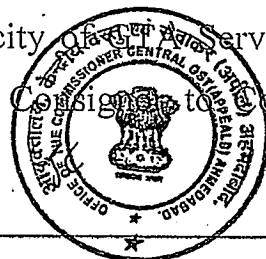
- The appellant from stage prior to issuance of show cause notice till its adjudication on ex-parte the appellant was deprived of opportunity of being presented their case as to why service tax is not payable on their activities. Accordingly, the appellant contended that such an adjudication of the impugned show cause notice on ex-parte basis is erroneous and is in gross violation of principal of Natural Justice.



- The details of consideration for hire as a means for transportation of goods by road and reflected in their 26AS and ITR for the FY 2015-16 and 2016-17 filed under Section 44AE of Income Tax Act, 1961 are tabulated as under :

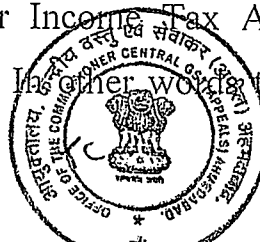
F. Y.	Name of Customer of the appellant	Consideration received
2015-16	Transport Corporation of India Limited	2,53,50,713/-
2016-17	Transport Corporation of India Limited	1,20,25,027/-
	TCI Express Limited	2,27,74,559/-
Total for F. Y. 2016-17		3,47,99,585/-
Grand Total		6,01,50,298/-

- The appellant being a Partnership/Proprietary firm, having less than 10 Nos. of goods carriage vehicle and engaged in plying, hiring the same, being eligible for and have opted for presumptive assessment scheme under Section 44AE of the Income Tax Act, 1961.
- An assessee adopting these provisions is not required to maintain the regular books of account and also exempt from getting the accounts audited. The appellant is issuing Vehicle wise Trip Sheet on monthly/weekly basis reflecting per truck per trip amount receivable from their customers. On the basis of amount receivable reflected in such Trip sheets, their customers are deducting TDS under Section 194C and deposits in to appellant's PAN.
- The ITR returns and 26AS are indicates such frequency of Trip sheets, amount received and its TDS. Based on such detail reflected in their 26AS, they are submitting their ITR under Section 44AE of Income Tax Act, 1961; that their Income from the operation is reflected in their 26AS which is the only income declared in their ITR on which present demand of service tax is raised is erroneous on the merits itself as their business activities is giving vehicle/goods carriage on hire as a means for transportation of goods by road.
- The operational income of the appellant is reflected in their 26AS is the sole Income of the appellant from their customers viz. Transport Corporation of India and TCI Express Limited. Both these customers are engaged in Transportation of goods by road in the capacity of Service Provider who actually transport goods Booked from Consignor to Consignee for

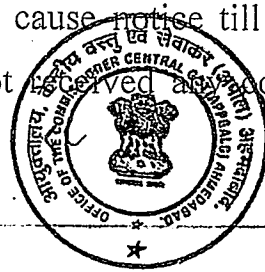


which there is no role of the appellant except providing vehicle on hire as a means of transportation of goods.

- As submitted herein above, the appellant is giving their 9 Vehicle on Hire to their customers and income received is on account of giving vehicle on hire as a means of Transportation of goods by road to their Customers who are actually involved in Transportation of Goods by Road in the capacity of GTA from their consignor to consignee.
- Since for the said activities the appellant issues vehicle wise, Trip Sheets indicating hire charges receivable from their customers and they not being GTA service provider not issues Consignment notes.
- The appellant submitted that such an activity is "Services by way of giving on hire to a goods transport agency, a means of transportation of goods is specifically covered in Sr.No.22 of Notification No.25/2012-ST and even otherwise such an activity is covered in Clause (p) of Section 66 D.
- They further submitted that they are not the person liable to pay service tax and hence not required to obtain Service tax Registration, and so is the case with ST-3 returns.
- The appellant was under the bona-fide belief that their consideration received towards giving their vehicle on hire as a means of transportation of goods by road to GTA service provider is not liable to service tax in terms of Sr.No.22 of Notification No.25/2012-ST, and there were no other Income earned by them during the year 2015-16 and 2016-17 which attracts service tax, they have not obtained Service tax registration, not filed ST-3 returns. Therefore, the value of Rs.6,01,50,298/- reflected in their ITR for FY 2015-16 and 2016-17 is cannot be taxed in terms of section 67 of the Finance Act, 1994 not towards gross amount charged.
- The appellant stated CBEC circular No. 186/5/2015-ST dated 05.10.2015 wherein it is categorically clarified who are the GTA service provider. Whereas in the case of the appellant, they are not carried out entire transportation of goods by road from consignor to consignee and not issuing consignment note. Instead they are providing the vehicle owned by them on hire to the GTA service provider. The consideration so received is reflected in their 26AS and they have opted for Income Tax Assessment under Section 44AE of Income Tax Act, 1961. In other words the service of the



- appellant is the input service for the GTA service provider and is rightly classifiable and exempted vide Sr.No.22 of Notification No.25/2012-ST.
- They submitted that their service is not liable to service tax being exempted vide Sr.No.22 of Notification No.25/2012-ST and also covered in clause(p) of Section 66D of the Finance Act, 1994, No service tax is payable by them. The value reflected in their ITR for FY 2015-16 and 2016-17 could not be taxed in term of Section 67 read with Section 68 of the Finance Act, 1994. This being the case demand of service tax of Rs.88,95,790/- is not sustainable on merits itself and hence no interest is payable by them under Section 75 of the Finance Act, 1994.
 - The appellant is rightly under bona-fide belief that their activities is not liable to service tax in terms of Section 66B of the Finance Act, 1994, they have not obtained service tax registration as required under section 69 of the Finance Act, 1994. Therefore they have not violated any of the provisions in this regard and accordingly the appellant contend that penalty of Rs. 10,000/- imposed in terms of Section 77(1)(a) of the Finance Act, 1994 is sustainable and is erroneously imposed only on presumption allegation confirmed in the impugned order.
 - As submitted herein above, the appellant is being assessed to Income tax under Section 44AE of the Income Tax Act, 1961 which provides that no regular books of account is required to be maintained and are not subjected to Audit. Their sole Income is booked as per Trip Sheets issued to their Customer on the basis of which they deduct TDS and crediting in their 26AS which is the sole evidence of Income which the appellant has declared in their ITR. Not only that, as submitted herein above, they are not subjected to any of the provisions of Finance Act, 1994 and rules made there under hence the operation of rule 5 of the Service Tax Rules, 1994 is not applicable in their case. Therefore the appellant contend that penalty of Rs.10,000/- imposed under Section 77(1)(b) of the Finance Act, 1994 is not sustainable and is erroneous.
 - As regard to imposition of penalty of Rs. 10,000/- in terms of Section 77(1) (c)(i) of the Finance Act, 1994 on the ground for failure to produce the documents called for by the proper officer, it is contended by the appellant that since initiation of issuance of show cause notice till impugned order issued on ex- parte the appellant has not received any communication as



submitted in detail elsewhere in this grounds of appeal. Additionally as explained above the appellant is not required to maintain regular books of accounts and not subjected to Audit, not liable to be registered under Service tax, the provisions of the Finance Act, 1994 and rules made there under are not applicable and hence the allegation leveled in this regard is baseless and erroneous and not sustainable under the law. Therefore the imposition of penalty of Rs.10,000/- is also not sustainable and erroneous.

- As submitted above the appellant is not liable to file Service tax returns or any information as they are out of service tax net, the provisions of the Finance Act, 1994 and rules made there under is not applicable and therefore the allegation leveled in this regard is not sustainable. Therefore the penalty of Rs. 10000/- imposed in terms of Section 77(1)(c)(ii) of the finance Act, 1994 is not sustainable and erroneous.
- As submitted herein above, the appellant's activities is exempted, they are not liable to obtain registration in terms of Section 69 read with Rule 4 of the Service Tax Rules, 1994, not required to pay service tax in terms of Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules, 1994, not. required to file ST-3 returns in terms of Section 70 read with Rule 7 of the Service Tax Rules, 1994, they have not contravened any of the said alleged provision. This being the case the appellant have not suppressed any thing from the department as they are out of service tax net, not required to comply any of the provisions of act and rules made in this regards. Therefore alleged charge of suppression of material facts with intent to evade payment service tax of Rs. Rs.88,95,790/- is not sustainable and demand of service tax is not sustainable on the grounds mentioned herein above, penalty of Rs. Rs.88,95,790/- imposed under section 78 of the Finance Act, 1994 is not sustainable under the law and merit itself.

6. Personal Hearing in the case was held on 13.10.2023. Shri Vijay N. Thakkar, Consultant, appeared on behalf of the appellant for the hearing. He reiterated the contents of written submission and requested to allow their appeal.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions made during personal hearing and materials available on record. It is observed from the record that the present appeal was



filed by the appellant on 09.05.2023 against the impugned order passed dated 30.03.2022, reportedly received by the appellant on 30.05.2022. It is observed that the Appeals preferred before the Commissioner (Appeals) are governed by the provisions of Section 85 of the Finance Act, 1994. The relevant portion of the said section is reproduced below :

“(3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 received the assent of the President, relating to service tax, interest or penalty under this Chapter:

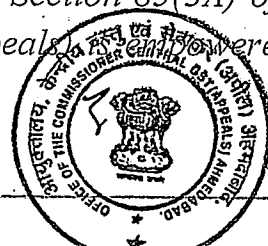
Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.”

7.1 In terms of Section 85 of the Finance Act, 1994, an appeal before the Commissioner (Appeals) is to be filed within a period of two months from the receipt of the order being appealed. Further, the proviso to Section 85 (3A) of the Finance Act, 1994 allows the Commissioner (Appeals) to condone delay and allow a further period of one month, beyond the two month allowed for filing of appeal in terms of Section 85 (3A) of the Finance Act, 1994.

8. In the instant case, the impugned order dated 30.03.2022 admittedly received by the appellant on 30.05.2022. Therefore, the period of two months for filing the appeal before the Commissioner (Appeals) ended on 30.07.2022. The further period of one month, which the Commissioner (Appeals) is empowered to condone for filing appeal ended on 30.08.2022. The present appeal filed by the appellant on 09.05.2023 is, therefore, filed beyond the Condonable period of one month as prescribed in terms of Section 85 of the Finance Act, 1994 and is time barred.

8.1 My above view also finds support from the judgment of the Hon'ble Tribunal, Ahmedabad in the case of Zenith Rubber Pvt. Ltd. Vs. Commissioner of Central Excise and Service Tax, Ahmedabad – 2014 (12) TMI 1215 – CESTAT, Ahmedabad. In the said case, the Hon'ble Tribunal had held that :

“5. It is clear from the above provisions of Section 85(3A) of the Finance Act, 1994 that Commissioner (Appeals) is empowered to



Commissioner (Appeals) has no power to condone the delay beyond the prescribed period. In our considered view, Commissioner (Appeals) rightly rejected the appeal following the statutory provisions of the Act. So, we do not find any reasons to interfere in the impugned order. Accordingly, we reject the appeal filed by the appellant."

9. In view of the above discussions and following the judgment of the Hon'ble Tribunal, supra, I do not find this a fit case for exercising the powers conferred vide Section 85 (3A) of the Finance Act, 1994. Therefore, I reject the appeal filed by the appellant on grounds of limitation only. I refrain from expressing any opinion with regard to the merit of the case.

10. 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.

G. G.

ज्ञानचंद जैन

आयुक्त (अपील्स)

Dated: 25 Oct, 2023



सत्यापित / Attested :

[Signature]
Superintendent (Appeals)
CGST Appeals, Ahmedabad

By REGD/SPEED POST A/D

To,
M/s Manojkumar Mohanlal Bhatia,
G-No-303, G-10C, Sector-28,
Gandhinagar, Gujarat-382028

Copy to :

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



