



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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By SPEED POST

DIN:- 20231164SW000000AFAB

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/1422/2023-APPEAL / 2932-36
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-124/2023-24 and 31.10.2023
(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	07.11.2023
(ङ)	Arising out of Order-In-Original No. 103/AC/DEM/ST/Varahi/2022-23 dated 28.11.2022 passed by the Assistant Commissioner, CGST, Division, - Mehsana, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Varahi Transport Co., Kalyaneshwar Society, 12 Dudhsagar Dairy Road, Mehsana, Gujarat-384002

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील 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:-

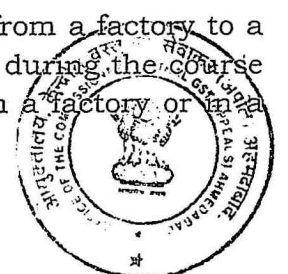
Revision application to Government of India:

(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 किमी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किमी भण्डागार या भण्डार में चाहे वह किमी 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 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.

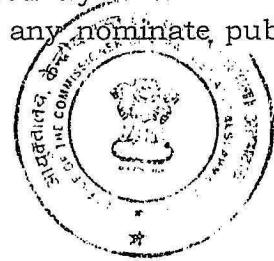
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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-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 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 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

The present appeal has been filed by M/s Varahi Transport Co., Kalyaneshwar Society, 12, Dudhsagar Dairy Road, Mehsana, Gujarat [hereinafter referred to as "the appellant"] against Order in Original No. 103/AC/DEM/ST/Varahi/2022-23 dated 28.11.2022 (Issue date 23.12.2022) [hereinafter referred to as "the impugned order"] passed by the Assistant Commissioner, CGST, Division - Mehsana, Commissionerate - Gandhinagar [hereinafter referred to as "the adjudicating authority"].

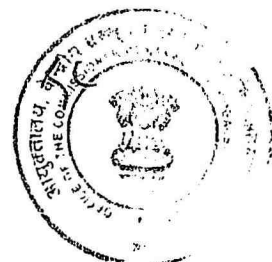
2. Briefly stated, the facts of the case are that the appellant was registered with Service Tax Department having registration no. AIEPC2548MSD001. As per information received from the Income Tax Department discrepancies were observed in the total income declared in the Income Tax Return/Form 26AS and Service Tax Returns for the period F.Y. 2014-15. Accordingly, in order to verify the said discrepancy, an email dated 19.06.2020 was issued to the appellant calling for the details of services provided during the period. They failed to submit any reply. However, the jurisdictional officers considered that the services provided by the appellant during the relevant period were taxable under Section 65 B (44) of the Finance Act, 1994 and the Service Tax liability for the F.Y. 2014-15 was determined on the basis of value of 'Sale of Services' under Sales/Gross Receipts from Services (Value from ITR) and Form 26AS for the relevant period as per details below :

Sr. No.	Period (F.Y.)	Differential Taxable Value as per Income Tax Data (in Rs.)	Rate of Service Tax incl. Cess	Service Tax liability to be demanded (in Rs.)
1.	2014-15	2,83,61,479/-	12.36%	35,05,478/-

3. A Show Cause Notice F.No. IV/16-13/TPI/PI/Batch 3C/2018-19/Gr.II/3612 dated 25.06.2020 (in short SCN) was issued to the appellant proposing to demand and recover Service Tax amounting to Rs. 35,05,478/- 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), Section 77C and Section 78 of the Finance Act, 1994.

4. The SCN was adjudicated *ex-parte* vide the impugned order wherein :

- Service Tax demand of Rs. 35,05,478/- was confirmed under Section 73(1) of the Finance Act, 1994 alongwith interest under Section 75 of the Finance Act, 1994.



- Penalty of Rs.10,000/- was imposed under Section 77 (1) (c) of the Finance Act, 1994.
- Penalty of Rs.10,000/- was imposed under Section 77(2) of the Finance Act, 1994.
- Penalty of Rs. 35,05,479/- was imposed under Section 78 (1) of the Finance Act, 1994 with option for reduced penalty in terms of clause (ii).

5. Aggrieved by the impugned order, the appellant has preferred this appeal on following grounds:

- The appellant submitted that they were engaged in the business of Transportation of Goods by Road/Goods Transport Agency Service and were registered under Service Tax Registration No. AIFPC2548MSD001.
- The appellant being transporter providing transportation services and issuing consignment notes wherein it was mentioned that service tax would be payable by consignee.
- Appellant reiterated the basic provision of goods transport operator agency service and also contended that GTA service is enumerated under reverse charge notification no. 30/2012 dated 20.06.2012. As per the notification, full service tax shall be paid by the person liable for paying service tax other than the service provider after considering abatement. The abatement for GTA service as given under notification no. 26/2012 dated 20.06.2012 as amended from time to time is 70% and therefore 30% of service tax is liable to be paid. As per Service Tax Rules, 1994, the person who pays or is liable to pay freight, either himself or through his agent, for the transport of goods by road in a goods carriage, has been made liable to pay service tax. But, if the person liable to pay freight is located in non-taxable territory, then the person liable to pay service tax shall be the service provider. It is clear that the appellant being service provider as a GTA was not liable for service tax. The service recipients were liable for service tax as per RCM provision.
- The department has computed demand of service tax for the period of 2016-17 & 2017-18 (Upto Jun-17) on the basis of income tax return data. Against which the appellant stated that while considering the income with books of accounts, the department has not taken into factual details regarding the appellant was providing transportation service wherein the service tax was to be paid by the



service recipient only. Without considering the factual details, the department has raised the demand which is not justifiable at all. They relied on the following citations :

- 2013 (31) S.T.R. 673 (Tri. - Bang.) IN THE CESTAT, SOUTH ZONAL BENCH, BANGALORE S/Shri M.V. Ravindran, Member (J) and P. Karthikeyan, Member (T) REGIONAL MANAGER, TOBACCO BOARD Versus COMMR. OF C. EX., MYSORE
- 2010 (20) S.T.R. 789 (Tri. - Mumbai) IN THE CESTAT, WEST ZONAL BENCH, MUMBAI Shri Ashok Jindal, Member (J) ANVIL CAPITAL MANAGEMENT (P) LTD. Versus COMMR. OF S.T., MUMBAI
- 2010 (19) S.T.R. 242 (Tri. - Ahmd.) IN THE CESTAT, WEST ZONAL BENCH, AHMEDABAD [COURT NO. II] Shri Ashok Jindal, Member (J) COMMISSIONER O SERVICE TAX, AHMEDABAD Versus PURNI ADS. PVT. LTD.
- 2009 (16) S.T.R. 63 (Tri. - Chennai) IN THE CESTAT, SOUTH ZONAL BENCH, CHENNAI Ms. Jyoti Balasundaram, Vice-President and Shri P. Karthikeyan, Member (T) SIFY TECHNOLOGIES LTD. Versus COMMISSIONER OF SERVICE TAX, CHENNAI
- 2013 (30) S.T.R. 62 (Tri. - Ahmd.) IN THE CESTAT, WEST ZONAL BENCH, AHMEDABAD [COURT NO. II] Shri B.S.V. Murthy, Member (T) BHOGILAL CHHAGULAL & SONS Versus COMMISSIONER OF S.T., AHMEDABAD

- The show cause notice covers the period of 01.04.2016 to 31.03.2017. The show cause notice has been issued on 21.10.2021. Thus, the show cause notice has invoked the extended period of limitation. The extended period of limitation cannot be invoked in the present case since there is no suppression, willful misstatement on the part of the appellant. There is no question of suppression or willful misstatement by the appellant. The show cause notice has entirely failed to make out any case of suppression, willful misstatement on the part of the appellant. The show cause notice is liable to be dropped on this ground also.
- The Show Cause Notice has not given any reason whatsoever for imposing the penalty under Section 78 of the Act. The show cause notice merely alleging badly that there is suppression on the part of the Appellant. The present show cause notice has not brought any evidence/ fact which can establish that the appellant has suppressed anything from the department. Hence no case has been made out on the ground of suppression of facts or willful misstatement of



facts with the intention to evade the payment of service tax. Hence, the present case is not the case of fraud, suppression, willful misstatement of facts, etc. Hence, penalty under section 78 of the Act cannot be imposed. The show cause notice is liable to be dropped on this ground also. Further, the Appellant is entitled to entertain the belief that their activities were not taxable. That cannot be treated as suppression from the department. The Appellant rely on Hon'ble Gujarat High Court decision in case of Steel Cast Ltd. 2011 (21) STR 500 (Guj).

- Penalty under Section 77 is not imposable since there is no short payment of service tax. As per the merits of the case, the Appellant is not liable for payment of Service tax. They rely on the various judgements of Hon'ble Courts and Tribunal.

6. Personal Hearing in the case was held on 18.08.2023. Shri Vipul Khandhar, Chartered Accountant, appeared for personal hearing on behalf of the appellant. He reiterated the submissions made in the appeal memorandum and the additional submissions handed over at the time of personal hearing. He also submitted that the appellant provided services are in relation to transportation of Milk which is exempt under Sr. No. 20(I) of the Mega Exemption Notification 25/2012-ST dated 20.06.2012. However, the adjudicating authority has passed the impugned order ex-parte, merely on the basis of income tax data without any verification. He requested to set aside the impugned order or to remand the matter back to the adjudicating authority.

6.1 On account of change in appellate authority personal hearing was again scheduled on 11.10.2023. Shri Vipul Khandhar, Chartered Accountant, appeared for personal hearing on behalf of the appellant. At the time of personal hearing, he submitted additional written submission. He reiterated the contents of the written submission made so far and requested to allow their appeal.

7. I find that the appellant has claimed that they are providing Transport of Goods by Road services/ Goods Transport Agency services (GTA) which is eligible for 100% Reverse Charge Mechanism (RCM) in terms of Notification No. 30/2012-ST dated 20.06.2012. They claim that they are not liable for payment of Service Tax as the tax liability lies with the Service receiver.

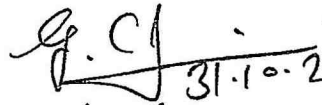


7.1 The appellant have further claimed that during the period F.Y. 2014-15 they have provided services related to 'Transportation of Milk by Road' which merits exemption from Service Tax in terms of Notification No. 25/2012-ST dated 20.06.2012. However, the documents produced by the appellant in support of their contention seeking exemption by virtue of transportation of Milk do not pertain to the period of demand i.e F.Y. 2014-15. It is also observed that the appellant have not produced relevant documents before the adjudicating authority and these documents are being produced for the first time before this authority. In view of the above the factual aspects of nature of Services provided by the appellant during the relevant period and their eligibility for exemption needs verification at the adjudication stage. Hence, I am of the considered view that for the fitness of things and in the interest of justice, the matter needs to be remanded back to the adjudicating authority.

8. Therefore, the impugned order is set aside and the matter is remanded back to the adjudicating authority for de-novo adjudication. The adjudicating authority should consider the facts of the case and the submissions of the appellant and issue a reasoned speaking order after following the principles of natural justice.

9. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed of in above terms.


31.10.23
ज्ञानचंद जैन

आयुक्त (अपील्स)

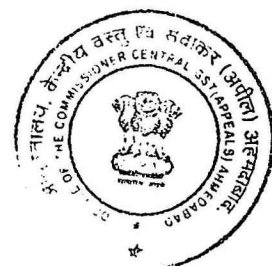
Dated: 31st October, 2023

सत्यापित /Attested :


सोमनाथ जोषी

अधीक्षक (अपील्स)

सी जी एस टी, अहमदाबाद



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1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST and Central Excise, Gandhinagar.
3. The Assistant Commisisoner, CGST & CEX, Mehsana Division, Gandhinagar Commissionerate.
4. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication of OIA on website.
5. Guard file.
6. PA File.



