



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:- 20231264SW0000008E8A

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/2315/2023-APPEAL / 9068-72
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-140/2023-24 and 29.11.2023
(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	05.12.2023
(ङ)	Arising out of Order-In-Original No. AHM-CEX-003-JC-SP-010-22-23 dated 31.01.2023 passed by the Joint Commissioner, CGST & Central Excise, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Chaudhari Narendra Muljibhai (HUF), Opp. Dudhsagar Dairy, Highway, 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, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

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

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

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं 2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

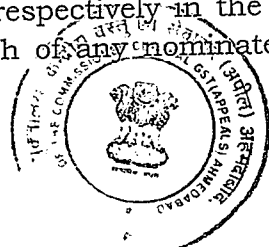
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-  
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(2) उक्तलिखित परिच्छेद में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

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

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-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 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।

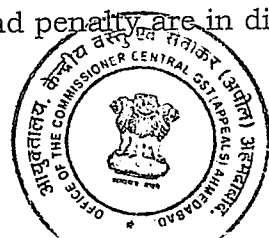
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

The present appeal has been filed by M/s Chaudhari Narendra Muljibhai (HUF), Opp. Dudhsagar Dairy, Highway, Mehsana, Gujarat-384002 [hereinafter referred to as "the appellant"] against Order in Original No. AHM-CEX-003-JC-SP-010-22-23 dated 31.01.2023 [hereinafter referred to as "the impugned order"] passed by the Joint Commissioner, CGST & Central Excise, Gandhinagar Commissionerate [hereinafter referred to as "the adjudicating authority"].

2. Briefly stated, the facts of the case are that the appellant were holding PAN No. AADHC4670F and were not registered under Service Tax. As per information in respect of unregistered taxpayers received through preventive section, it was observed that during the period F.Y. 2016-17 the appellant had earned substantial service income but had neither obtained service tax registration nor paid service tax thereon. Accordingly, in order to verify the said discrepancy, the jurisdictional Office issued letter dated 13.09.2021 and email dated 04.10.2021 & 11.10.2021 to the appellant calling for the details of services provided during the period F.Y. 2016-17. However no reply was submitted. Personal Hearing for Pre-SCN Consultation was fixed on 21.10.2021, their representative appeared and informed that they have already submitted reply and there is no liability of Service Tax. However, the jurisdictional officer considering the services provided by the appellant during the relevant period as taxable under Section 65 B (44) of the Finance Act, 1994 determined the Service Tax liability for the F.Y. 2016-17 on the basis of value of 'Sales of Services' under Sales/Gross Receipts from Services (Value from ITR) and Form 26AS as 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 payable but not paid (in Rs.)
1.	2016-17	3,51,84,969/-	15%	52,77,745/-

3. The appellant was issued Show Cause Notice No. GEXCOM/ADJN/ST/ADC/1382/2021-ADJN dated 22.10.2021 (in short SCN) proposing to demand and recover Service Tax amounting to Rs.52,77,745/- for the period F.Y. 2016-17, under proviso to Section 73 (1) of Finance Act, 1994 along with interest under Section 75 of the Act. The SCN also proposed imposition of penalty under Sections 77(1)(a), Section 77(1)(c), Section 77(2) and Section 78 of the



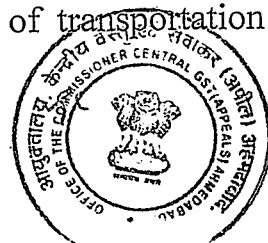
Finance Act, 1994. It was also proposed that Service Tax liability not paid during the F.Y. 2017-18 (upto June 2017), ascertained in future due to non-availability of pertaining data.

4. The SCN was adjudicated vide the impugned order wherein :

- Service Tax demand of Rs.62,35,812/- was confirmed for the period F.Y. 2016-17 & F.Y. 2017-18 (upto June 2017) 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)(a) 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.62,35,812/- 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 is engaged in providing services of transportation of milk to its customers at various centers. Based on the instructions received from the customer, transports the milk belonging to customers from one place to another in transport vehicle. The vehicle used for transportation of milk is specially modified for transportation of milk and cannot be used for transportation of any other material / product. Sample copies of work order and sample invoices entered with Milk Producers' Union / Dairy are submitted for reference.
- Appellant has disclosed the income of transporting the milk in income tax return under the head Sales/ Gross receipts of business "Sale of Services" reconciling with income ledger as per accounting records. For the verification purpose Form 26AS for F.Y. 2016-17 and F.Y. 2017-18 are submitted for reference.
- As per Notification No. 25/2012-ST, Entry no. 21(d) exempts services provided by goods transport agency by way of transportation of milk in a



goods carriage. Extract of the said notification is reproduced as under:

*"21. Services provided by a goods transport agency by way of transportation in a goods carriage of-*

*(a) agricultural produce;*

*(b) goods, where gross amount charged for the transportation of goods on a consignment transported in a single carriage does not exceed one thousand five hundred rupees;*

*(c) goods, where gross amount charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred fifty;*

*(d) milk, salt and food grain including flours, pulses and rice;]*

➤ Further Goods Transport Agency is defined under Section 65 B (26) as under:

*"goods transport agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called"*

➤ As per Rule 4B of Service Tax Rules 1994, where services provided by goods transport agency is exempt from service tax, goods transport agency shall not be required to issue consignment note. Although the appellant was not required to issue consignment note, the invoice raised by the appellant fulfills all the ingredients of consignment note. Relevant extract of Rule 4B is reproduced below:

*Any goods transport agency which provides service in relation to transport of goods by road in a goods carriage shall issue a consignment note to the recipient of service:*

*Provided that where any taxable service in relation to transport of goods by road in a goods carriage is wholly exempted under section 93 of the Act, the goods transport agency shall not be required to issue the consignment note.*

*Explanation - For the purposes of this rule and the second proviso to rule 4A, "consignment note" means a document, issued by a goods transport agency against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains the names of the consignor and consignee, registration number of the goods carriage in which the goods are transported, details of the goods transported, details of the place of origin and destination, person liable for paying service tax whether consignor, consignee or the goods transport agency.*

➤ Notwithstanding anything submitted above, it is submitted that appellant being a Goods Transport Agency, service tax on transportation services provided by



the appellant was payable by the recipient of services. Hence, it is submitted that in erstwhile Service Tax Law, for transportation services, the recipient of service was liable to pay Service Tax instead of supplier of service in respect of service by way of transportation of goods by goods transport agency vide Rule 2 (1) (d) (B) of Service Tax Rules, 2004 read with Sr. no. 2 of Notification no 30/2012-ST. Relevant extract of the said notification is as under:

Sr. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by any person liable for paying service tax other than the service provider
2	in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road	NIL	100%

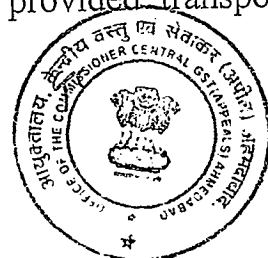
- As per above, service tax is to be paid by the receiver of service in case of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road. Hence, in this case recipient is liable to pay tax under reverse charge mechanism. Therefore, appellant is not liable to discharge tax under forward charge mechanism.
- The Adjudicating authority has calculated the service tax liability on the basis of the value of "Sales/gross receipts from services" shown in the ITR for the F.Y. 2016-17 which is clearly mentioned in Para No. 24 of the OIO. Apart from this there is no reference of how such Income is taxable as per provisions of Service Tax Law. There has been no attempt done by the adjudicating authority on how the income disclosed in Income Tax return is taxable under Service Tax Law. No recovery based on IT return - Plethora of judicial pronouncements have settled the law that no demand of service tax can be confirmed on the basis of amounts shown as receivables in the Income Tax Returns. They relied on the following judgements of Hon'ble Courts & Tribunals in case of :
- J.I Jesudasan vs. CCE 2015 (38) S.T.R 1099 (Tri.Chennai);
  - Alpha Management Consultant P. Ltd vs. CST 2006 (6) STR 181 (Tri.Bang);
  - Tempest Advertising (P) Ltd. v. CCE 2007 (5) STR 312 (Tri.-Bang.);
  - Turret Industrial Security vs. CCE 2008 (9) S.T.R-564 (Tri- Kolkata).



• Faquir Chand Gulati vs. Uppal Agencies Pvt Ltd 2008 (12) S.T.R 401 (S.C)

- Further as per para no. 16 of the impugned order, it has been alleged that tax liabilities have been worked out on the basis of limited data/information received from income tax department for FY 2016-17. It is clarified that appellant has submitted all relevant documents in response to all notice, letters issued by department. Also, it has been mentioned in each reply that appellant is engaged in exempt service of transportation of milk as per service tax law. Despite the submission of all documents related to services provided by appellant, department has not considered the replies made by appellant and issued show cause notice.
- In the Para 7 and 8 of reply of show cause notice, it has been mentioned that appellant already submitted all the requisite documents to the adjudicating authority, but they alleged in Para 24 of OIO that the appellant not provided any details for the period of F.Y. 2016-17.
- The appellant has never suppressed any details which were asked by the departmental officers and has duly submitted relevant documents demanded by departmental officers, the allegation 'suppression of facts' is incorrect. Hence it can be said that in such facts and circumstances, the invocation of the extended period may not be in accordance with the law and hence the SCN in question is required to be vacated. Thus, in the absence of willful suppression on the part of the Appellant, extended period of limitation under Section 73(1) cannot be invoked and therefore the demand to that extend is liable to be set aside.
- It is a settled principle of law that in cases where the original demand is not sustainable, interest cannot be levied. In view of the aforesaid submissions, it is clear that the demand itself is not sustainable and hence, the question of imposing interest & penalty does not arise. Hence, the demand of interest & penalty by the impugned Order is liable to be dropped.

6. Personal Hearing in the case was held on 11.09.2023. Shri Rashmin Vaja, Chartered Accountant, appeared for personal hearing on behalf of the appellant. He reiterated submissions made in the appeal and the summary of the case submitted at the time of hearing. He submitted that the appellant provided transport of milk





service, which is reflected in the Form 26AS and the work orders submitted, the same is exempted from service tax vide entry 21D of the Notification 25/2012-ST. Therefore, he requested to set aside the impugned order.

6.1 On account of change in appellate authority personal hearing was again scheduled on 12.10.2023. Shri Rashmin Vaja, Chartered Accountant & Shri Foram Dhruv, Chartered Accountant appeared for personal hearing on behalf of the appellant. He reiterated the contents of the appeal memorandum and requested to allow their appeal.

7. 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, the impugned order passed by the adjudicating authority and other case records. The issue before me for decision in the present appeal is whether the demand of service tax amounting to Rs.62,35,812/- confirmed under proviso to Section 73 (1) of Finance Act, 1994 alongwith interest, and penalties vide the impugned order passed by the adjudicating authority in the facts and circumstances of the case is legal and proper or otherwise. The demand pertains to the period F.Y. 2016-17 & F.Y. 2017-18 (upto June-2017).

8. From the submissions made by the appellant it is observed that the appellant is engaged in providing services by way of "Transportation of Goods i.e. Milk" as "Goods Transport Agency" (in short GTA) for (i) Kaira Dist. Co. Op. Milk Producers Union Ltd & (ii) Mahi Milk Producer Company Ltd, during the period F.Y. 2016-17 & F.Y. 2017-18 (upto June-2017). They have claimed that their services of Milk Transportation stands exempted from Service Tax in terms of Sr. No. 21 (d) of Notification No.25/2012-ST dated 20.06.2012. I also find that the appellant had submitted their financial records but the jurisdiction officer had not considered & examined the case and issued SCN without any verification.

8.1 8. I find it relevant here, to refer to the CBIC Instruction dated 26.10.2021, wherein at Para-3 it is instructed that:

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



North Block, New Delhi,  
Dated- 21<sup>st</sup> October, 2021

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

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

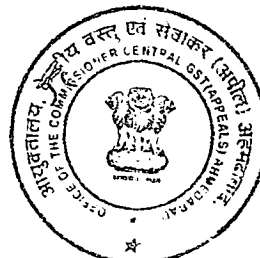
Madam/ Sir,

...  
3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner /Chief Commissioner (s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee  
...

Examining the facts of the case and the specific Instructions of the CBIC, I find that the SCN and the impugned order has been issued indiscriminately and is vague, being issued in clear violation of the instructions of the CBIC discussed above.

9. On going through the Form 26AS & P&L A/c, I find that they had transported the milk for (i) Kaira Dist. Co. Op. Milk Producers Union Ltd & (ii) Mahi Milk Producer Company Ltd during the period, but the contractual income shown in P&L A/c & the amount paid under Section 194C in Form 26AS have difference of Rs. 15,66,114/- & Rs. 13,29,743/- in the period of F.Y. 2016-17 & F.Y. 2017-18 (upto June-2017) respectively. It transpires that they had income by way of transportation as GTA other than transportation of Milk as tabulated below :

F. Y. 2016-17		
Sr. No.	Name of Deductor (TDS deducted under Section 194C of the Income Tax Act, 1964)	Amount paid
1	Kaira Dist. Co. Op. Milk Producers Union Ltd	2,22,37,142
2	Mahi Milk Producer Company Ltd	1,13,81,713
3	Total amount received from Milk Transport as per Form 26 AS (1+2) stands exempted from Service Tax in terms of Sr. No. 21 (d) of Notification No.25/2012-ST dated 20.06.2012	3,36,18,855
4	Contractual Income shown in P&L A/c	3,51,84,969
	<b>Difference income as 'GTA' (4-3)</b>	<b>15,66,114</b>



F. Y. 2017-18 (upto June-2017)		
Sr. No.	Name of Deductor (TDS deducted under Section 194C of the Income Tax Act, 1964)	Amount paid
1	Kaira Dist. Co. Op. Milk Producers Union Ltd	35,66,274
2	Mahi Milk Producer Company Ltd	14,91,095
3	Total amount received from Milk Transport as per Form 26 AS (1+2) stands exempted from Service Tax in terms of Sr. No. 21 (d) of Notification No.25/2012-ST dated 20.06.2012	50,57,369
4	Contractual Income shown in P&L A/c	63,87,112
	<b>Difference income as 'GTA' (4-3)</b>	<b>13,29,743</b>

They have strongly contended that they have not issued any Consignment Note for their remaining income as GTA service, as per rule 4B of Service Tax Rules, 1994. The relevant part of the Rule 4B is reproduced as under:

***"4B. Issue of consignment note.- Any goods transport agency which provides service in relation to transport of goods by road in a goods carriage shall issue a consignment to the recipient of service.***

***Provided that where any taxable service in relation to transport of goods by road in a goods carriage is wholly exempted under section 93 of the Act, the goods transport agency shall not be required to issue the consignment note."***

***"Power to grant exemption from service tax.***

***93. (1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally or subject to such conditions as may be specified in the notification, taxable service of any specified description from the whole or any part of the service tax leviable thereon.***

***(2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt any taxable service of any specified description from the payment of whole or any part of the service tax leviable thereon, under circumstances of exceptional nature to be stated in such order."***

9.1 From the above discussions, it is evident that the appellant had earned the taxable income other than transportation of Milk of Rs. 15,66,114/- & Rs. 13,29,743/- in the period of F.Y. 2016-17 & F.Y. 2017-18 (upto June-2017) respectively. They have not provided the any details regarding the above discussed taxable income other than transportation of Milk to this authority. Hence, the



avermment of the appellant is subject to verification after the relevant submissions on the taxable income other than transportation of Milk.

10. Considering the facts of the case as discussed herein above and in the interest of justice, I am of the considered view that the case is required to be remanded back to the adjudicating authority so that they can evaluate the appellant's claim following their submission and decide the case afresh accordingly.

11. I, therefore, set aside the impugned order and remand the matter 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.

12. 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.

*G.C.*  
29.11.23  
ज्ञानचंद जैन

आयुक्त (अपील्स)

Dated: 29<sup>th</sup> November, 2023

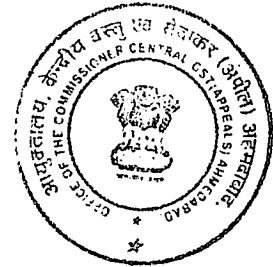
सत्यापित/Attested :

*रेखा*

रेखा नायर

अधीक्षक (अपील्स)

सी जी एस टी, अहमदाबाद



**By REGD/SPEED POST A/D**

To,

M/s Chaudhari Narendra Muljibhai (HUF),

Opp. Dudhsagar Dairy, Highway,

Mehsana, Gujarat-384002.

Copy to :

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

