



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:- 20231264SW000000F3B2

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/3015/2023-APPEAL/9133 - 32
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-148/2023-24 and 30.11.2023
(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. 199/AC/DEM/MEH/ST/Sushilaben S. Patel/2022-23 dated 31.03.2023 passed by the Assistant Commissioner, CGST, Division - Mehsana, Commissionerate - Gandhinagar	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Sushilaben Sanjaykumar Patel, Opp. Dena Bank, Station Road, Unjha, Gujarat-384170

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:-

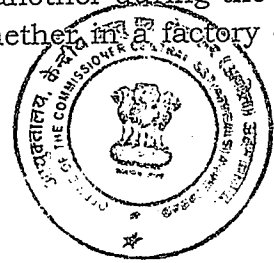
Revision application to Government of India:

(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 मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित हैं।

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 हों।

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 ईए-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 होतो 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.

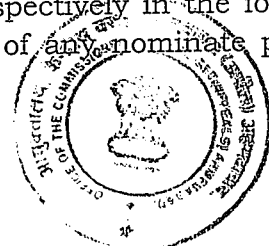
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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 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।

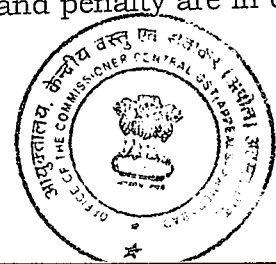
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 Sushilaben Sanjaykumar Patel, Opp. Dena Bank, Station Road, Unjha, Gujarat-384170 [hereinafter referred to as "the appellant"] against Order in Original No. 199/AC/DEM/MEH/ST/Sushilaben S. Patel/2022-23 dated 31.03.2023 [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 were not registered under Service Tax and were holding PAN No. AGRPP5969L. As per information received from the Income Tax Department, it was observed that during the period F.Y. 2016-17, the appellant had earned substantial service income by way of providing taxable services, but had neither obtain Service Tax Registration nor paid Service Tax thereon. Accordingly, in order to seek information, letters dated 13.09.2021 & 11.10.2021 were issued to the appellant calling for the details of services provided during the period. But they didn't submit any reply. Further, the jurisdictional officers considering the services provided by the appellant 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 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.	2016-17	21,96,750/-	15%	3,29,512/-

3. The appellant was issued Show Cause Notice No. CGST/Div/Mehsana/78/AGRPP5969L/21-22 dated 18.10.2021 (in short SCN) proposing to demand and recover Service Tax amounting to Rs.3,29,512/- 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 Section 70, Section 77(1)(a) 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.3,29,512/- 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)(a) of the Finance Act, 1994.
- Penalty of Rs.20,000/- was imposed under Section 70 of the Finance Act, 1994.
- Penalty of Rs.3,29,512/- 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 impugned Order is against law, contrary to the facts on record and circumstances of the case, unjust, erroneous and passed without following natural Justice. The same merits to be quashed on this ground alone.
- In the present case the service tax liability of the appellant was ascertained on the basis of income mentioned in the ITR returns and Form 26AS filed by the appellant with the Income Tax Department. Accordingly, the department has considered the figures mentioned in the ITR provided by the Income Tax Department as the total taxable value in order to ascertain the service tax liability Rs.3,29,512/- under Section 73 of the Finance Act, 1994 for the Financial year 2016-17. The method to ascertain Service tax liability on the basis of ITR returns and Form 26AS is not as per law which clearly violated the Instruction dated 26.10.2021 issued by the CBIC. Therefore, on this very ground the demand raised vide the impugned SCN is liable to be dropped. They relied upon the judgements of the Hon'ble Tribunal in case of Kush Constructions vs CGST NACIN 2019 (34) GSTL 606 (Tri – All) & Luit Developers Private Limited Vs Commissioner of CGST & Central Excise.
- It is a settled position of law that income shown in the income tax returns/Form 26AS is not proper basis to determine the service tax without establishing the taxability of service. They relied upon the judgements of the Hon'ble Supreme Court in case of Faquir Chand Gulati vs. Uppal Agencies Pvt Ltd 2008 (12) S.T.R 401 (S.C). Further plethora of judgments have settled the law; reliance



can be placed on Synergy Audio Visual Workshop Pvt Ltd versus Commissioner of Service Tax Bangalore 2008 (10) STR 578; Alpa Management Consultant P. Ltd Vs CST 2006 (4) STR 21 (Tri.Bang) and CCE Ludhiana vs Deluxe Enterprises 2011 (22) STR 203.

- Hence, SCN is invalid as the proposed demand is without determining classification / category of service. The SCN would generally presume that the difference in turnover is towards provision of service. It is a settled law that no service tax liability can be fastened on any appellant without determining the classification of service. Further, once there is no allegation in the Show Cause Notice based on which the demand is proposed then the demand cannot be sustained. In this regard, appellant placed reliance on Supreme court decision in case of CCE v. Brindavan Beverages (2007) 213 ELT 487(SC) and further refer Deltax Enterprises vs. CCE, Delhi 2018 (10) GSTL 392 (Tri – Del) where in it was held that no service tax liability can be fastened on an unidentified service. There is no provision for such summary assumption under the Finance Act, 1994.
- The appellant submitted that they are individual transporter and owner of three truck bearing Registration No. GJ 02 Z 8182, GJ 02 XX 8787 and GJ 02 XX 8585. They submitted the Registration Certificate and copies of insurance policy issued by United India Insurance Company Ltd of all the above three trucks. The Appellant being a truck owner have received truck freight of Rs. 21,96,750/- during the Financial Year 2016-17. The appellant was the owner of trucks and have received freight on transportation of goods by road as truck owner/Truck Operator.
- As per the Finance Act, 1994, only Goods Transport Agency is covered under the category of service provider and service tax is leviable only on the Goods Transport Agency. The Truck Owner/Truck Operator is not covered under the category of service provider under the Service Tax Act and they are not required to take Service Tax Registration. Further, no service tax is leviable from individual Truck Owner who providing their truck to transport the goods by Road.



➤ Appellant submitted that the service provided by the appellant kept out of ambit of Service tax under the Negative list given in the Section 66D of Finance Act, 1994. The clause (p) of Section 66D of Finance Act, 1994 produced below.

(p) Services by way of transportation of goods—

(i) by road except the services of

(a) a goods transportation agency; or

(b) a courier agency;

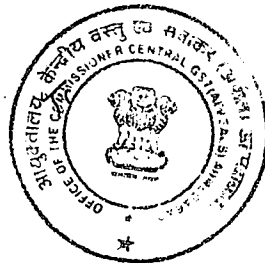
➤ The Appellant submitted that Documents submitted i.e. Registration Certificate and Insurance Policy, it can be ascertained that all the three truck are registered in the name of Appellant i.e. Sushilaben Sanjaykumar Patel who is individual truck owner/Truck Operator and not Goods Transport Agency. From this it can be concluded that the Appellant is not Goods Transport Agency but individual truck owner/Truck Operator.

➤ Further the Appellant submitted that Services provided by way of transportation of goods by road are in the negative list in clause (p) of Section 66D. However, such clause makes an exclusion of services provided by Goods Transport Agency. Thus, it can be inferred that services provided by Goods Transport Agency are taxable services. One important question flashes whether services provided by the truck owners/Truck Operator by themselves are taxable. In this regard following points are noticeable :

(i) Negative list excludes the services by way of transportation of goods except by way of good transport agency. Thus, it can be said that the intention of law is to tax only services of good transport agency and not the services by way of transport of goods by road. Since truck owner are not GTA therefore, they are not liable to pay Service Tax.

(ii) In the budget speech of Mr Chidambaram given on 08/07/2004 (para 149 of speech)

'...58 services have been brought under the net so far. I propose to add some more service this year. These are business exhibition services, airport services, services provided by good transport booking agents, transport off goods by air,



survey and exploration services, opinion poll services, I may clarify that there is no intention to levy service tax on truck owners of truck operators.

(iii) In CCE v Kanaka Durra Agro Oil Products (P) Ltd 2009 (3) TMI 130 - CESTAT, BANGLORE, - it has been confirmed that there is no liability to pay service tax on the recipient of the service in cases of transportation undertaken by the individual truck operators/lorry owners and not by Goods Transport Agencies – same view have been taken in the following decision:-

- Shanti Fortune v. CCE (2010) 24 STT 464 (CESTAT SMB)
- Bellary Iron v. CCE (2010) 24 STT 557 = 35 VST 107 (CESTAT)
- KMB Granites v. CCE (2010) 25 STT 141 (CESTAT SMB)
- Wood Bridge Tea factory v. CCE (2010) 25 STT 263 (CESTAT SMB)
- MSPL Ltd. v. CCE (2010) 27 STT 400 = 46 VST 132 (CESTAT)
- Salem Coop Sugar Mills v. CCE (2010) 25 STT 320 (CESTAT)
- Ultra Tech Cement v. CCE (2010) 29 STT 114 (CESTAT).

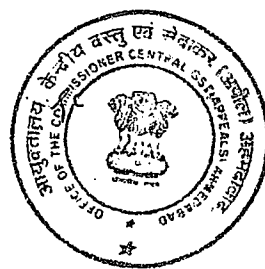
- According to section 66D (p) Services by way of transportation of goods- (i) by road except the services of – (A) a goods transport agency; or (B) a courier agency” kept out of ambit of Service Tax and according to section 65B: “(26) goods transport agency means any person who provides services in relation to transportation of goods by road and issues consignment note, by whatever name called.” So service tax is applicable when service is provided by a person covered under the above definition of GTA and not applicable to individual truck owners/truck operator.
- Thus, looking to the explained provisions of law above and the ratios of judgements cited above Appellant submitted that he being a truck owners/truck operator are not liable to pay service tax on the service of transport of good by road when such services are provided by themselves and not in the capacity of GTA. Hence, above provision excludes the services by way of transportation of goods by Road except by way of goods transport agency and by courier agency. Thus, it can be said that the intention of law is to tax only services of good transport agency and not the services by way of transport of goods by



road. Since truck owner/Truck Operator are not GTA therefore, they are not liable to pay Service Tax.

- From the above pronouncement, the legislative intent not to tax truck owners or truck operators is beyond doubt. In the absence of a finding of the Adjudicating authority that the appellants had provided service (which is also not clarified in the findings), the impugned demand of service tax and penalties are liable to be set aside. From the definition of the GTA and also the clarification given by the Finance Minister in the Budget Speech, the Ld. Commissioner will find that the service tax has been confirmed wrongly and illegal and the Appellant is not liable to pay any service tax.
- It is correct that section 70 of the Finance Act requires every person liable to pay service tax to himself assess the tax on the services provided by him and furnish a return, However, appellant is providing exempted service and he is not required to furnish a return to the Department cannot take a stand that evasion of service tax detected from the income tax data which is not the fair ground to invoke extended period. They relied upon the various judgements of Hon'ble Courts & Tribunals.
- Both SCN and OIO failed to establish wilful suppression on the part of the appellant and SCN is issued without arbitrarily and illegally. They relied upon the various judgements of Hon'ble Courts & Tribunals.
- As discussed in the preceding paras, as service tax is not required to be paid, no interest under section 75 can be demanded from the appellant. It is a well-settled principle of law that where there is no demand of duty, interest and penalty cannot be imposed. They relied upon the various judgements of Hon'ble Courts & Tribunals.

6. Personal Hearing in the case was held on 28.11.2023. Shri Dilipkumar Natvarlal Patel, Chartered Accountant, appeared for personal hearing on behalf of the appellant. He reiterated the contents of the written submission and requested to allow the appeal. He stated that the client is truck owner.



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.3,29,512/- 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 of F.Y. 2016-17.

8. I find that the appellant claimed that they are individual Transporter, having three trucks and have received freight on transportation of goods by road as Truck Owner / Truck Operator. They strongly contended that these services cannot be considered as 'Goods Transport agency Service' and merit exemption from Service Tax in terms of Section 66D of the Finance Act, 1994. The relevant portion of the Section is reproduced as below:

Section 66D: The negative list shall comprise of the following services, namely:

...

(p) services by way of transportation of goods

(i) by road except the services of

(A) a goods transportation agency; or

(B) a courier agency;

8.1 Examining the above provisions with the facts of the case, prima facie it transpires that the services provided by the appellant by way of transportation of Goods by road without issuing any consignment note, merit exemption from levability of Service tax in terms of Section 66D(p)(i) of the Finance Act, 1994, but they have not submitted any conclusive documentary evidence to establish the fact except the Certificate of Registration & Insurance of three Trucks, acknowledgement of ITR-3. In absence of sample invoices, sales ledger, P&L A/c, Balance Sheet & Form 26AS, their contention does not hold merits.

8.2 In this regard, I find it relevant to refer the judgment of the Hon'ble High Court of Madras in the case of CCE, Salem Vs. Suibramania Siva Co-Op. Sugar Mills Ltd.



– 2014 (35) STR 500 (Mad.). The relevant part of the said judgment is reproduced as below :

“15. A reading of the decision of the Bangalore Tribunal shows that in considering the applicability of the exemption Notification No. 34/2004-S.T., dated 3-12-2004, the Tribunal referred to the amendment to Section 65(50b) of the Finance Act on “Goods Transport Agency” and the clarification given by the Finance Minister in his Budget Speech and thus held that when the services were rendered by individual truck owner/operators, there was no liability to service tax. Thus the Tribunal viewed that when the tax was paid wrongly, the assessee was not liable to pay any service tax. In the circumstances, the Bangalore Tribunal allowed the appeal.

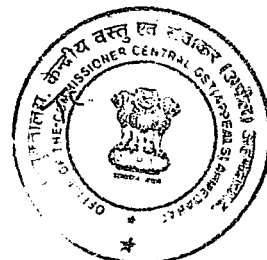
16. As far as the reliance placed on the **Finance Minister’s Speech in the course of budget presentation is concerned, Courts have consistently held that budget speech would not be taken in aid for understanding the scope of the clear terms of the provisions in the taxation enactment** vide the decision of the Apex Court reported in 1998 (9) SCC 630 = 1998 (99) E.L.T. 199 (S.C.) [*Union of India v. Ganesh Rice Mills and Another*].

17. Section 65(50b) of the Finance Act, 1994 defines the “Goods Transport Agency” as ‘any person’ who provides service in relation to transport of goods by the road and issuing consignment note, by whatever name called.

18. The expression “any person” is not defined under the Act. Section 3(42) of the General Clauses Act defines “person”, as including any company or association or body of individual whether incorporated or not. The thrust of the definition is that it includes every person engaged in an activity providing service of transport of goods by road. Thus, any commercial or a proprietary concern carrying on the business of Goods Transport would fall under the definition of “Goods Transport, Agency” in Section 65(50b) of the Finance Act. In the absence of any words of restriction, the definition ‘any person’ thus would have application to any concern providing the service.”

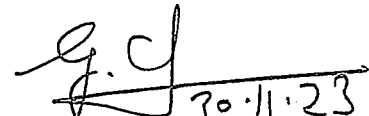
9. Considering the facts of the case & case law as discussed herein above and in the interest of justice, I am of the considered view that the case is required to be remanded back to the adjudicating authority so that they can evaluate the appellant’s claim following their submission and decide the case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

10. 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.

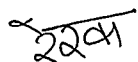
11. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in above terms.


30.11.23
ज्ञानचंद जैन

आयुक्त (अपील्स)

Dated: 30th November, 2023

सत्यापित/Attested :



रेखा नायर

अधीक्षक (अपील्स)

सी जी एस टी, अहमदाबाद



By REGD/SPEED POST A/D

To,

M/s Sushilaben Sanjaykumar Patel,

Opp. Dena Bank, Station Road,

Unjha, Gujarat-384170.

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1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST and Central Excise, Gandhinagar.
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4. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication of OIA on website.
- ✓ 5. Guard file.
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