



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015
GST Bhavan, Ambawadi, Ahmedabad-380015
Phone: 079-26305065 - Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in
Website : www.cgstappealahmedabad.gov.in



आज़ादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20231264SW0000444CB1

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/3013/2023-APPEAL / 9591-95
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-155/2023-24 and 18.12.2023
(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	21.12.2023
(ङ)	Arising out of Order-In-Original No. 53/AC/DEM/MEH/ST/R.L.Agarwalla & Co./2022-23 dated 13.06.2022 passed by the Assistant Commissioner, CGST, Division – Mehsana, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. R.L. Agarwalla & Co, F-34, Wide Angle, Highway, Mehsana – 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:-

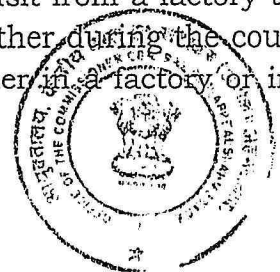
Revision application to Government of India:

(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 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 प्रकिया 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 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।

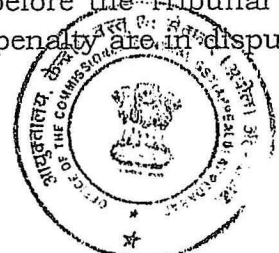
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



ORDER-IN-APPEAL

The present appeal has been filed by M/s. R.L. Agarwalla & Co, F-34, Wide Angle, Highway, Mehsana – 384002 [hereinafter referred to as "the appellant"] against Order in Original No. 53/AC/DEM/MEH/ST/R.L.Agarwalla & Co./2022-23 dated 13.06.2022 [hereinafter referred to as "the impugned order"] passed by the Assistant Commissioner, CGST, Division – Mehsana, Gandhinagar Commissionerate [hereinafter referred to as "the adjudicating authority"].

2. Briefly stated, the facts of the case are that the appellant was engaged in providing 'Maintenance & Repair service', 'Commercial or Industrial Construction service', 'Works Contract service', 'Rent-a-Cab service' and is holding Service Tax Registration No. AAGFR6664RST002 for the unit located in Gujarat State and Service Tax Registration No. AAGFR6664RST001 for the unit located in Assam State. The appellant had been issued the following Show Cause Notices for non-payment / short payment of Service Tax:

Sr. No.	Show Cause Notice F. No.	Date	Issued by whom	Period	Amount of Service Tax not paid (Rs.)
1	V.ST/15-62/Dem./OA/15-16	05.11.2015	The Additional Commissioner, C.Ex & Service Tax, Ahmedabad -III	F.Y. 2010-11 to F.Y. 2013-14	13,52,879/-
2	V.ST/11A-57/RL Agarwalla/2018-19	14.02.2019	The Assistant Commissioner Central GST & C.Ex. Div- Mehsana	F.Y. 2014-15	26,94,196/-

2.1 For ascertaining the payment of service tax liability for further period, the appellant was asked to produce copies of the Balance Sheet, Profit and Loss account, Form 26AS, contracts, invoice etc. for the period from F.Y. 2015-16 to June, 2017. The appellant produced the documents of their Assam registered unit vide their letter dated 27.05.2019. They have not filed any Service Tax return for the Service Tax number of Mehsana Unit. On scrutiny of the documents submitted by the appellant, it appeared that the appellant had received an amount of Rs.5,47,56,744/- as "Gross receipt from Contract Works and Vehicle Hire" from their various service recipients and they were engaged in the business of providing services in two states i.e. one in Gujarat State and another in Assam State. They have been awarded works contract for (i) laying and maintenance of underground oil and gas pipelines by the O.N.G.C. for their Ankleshwar & Mehsana Assets (Gujarat), (ii) work for flow lines/trunk pipelines/installation works/colony gas pipeline works and civil work by the C & M Section, M/s ONGC Ltd., Ahmedabad Asset (Gujarat), (iii) providing hiring service of scrapping winches units for Ankleshwar & Ahmedabad Assets, work of transportation of pipes, materials, drilling persons at various drilling sites of M/s ONGC Ltd., supplying of vehicles/trailers/taxis on hiring basis to M/s ONGC Limited.

2.2 On perusal of the Profit & Loss Accounts for F.Y.2015-16 to F.Y.2017-18 (up to June-2017), it was noticed by the jurisdictional office that they have incomes under the head of "Vehicle Hire" and "Works Contract" receipts and they have received incomes from ONGC



(Assam) and ONGC (Baroda-SEZ Unit). It further appeared that the appellant were also providing 'Supply of Tangible Goods' service and not Goods Transport Agency' Service as they were not providing the service of transportation of goods and were not issuing any LR or Consignment Note for the goods transported. The appellant was only issuing monthly bills for hiring charges for the vehicles supplied by them. The appellant was not paying service tax on such hiring charges collected from their customers. The appellant, it appeared, was required to pay service tax on full value without any abatement on the value. It further appeared that the appellant were not fulfilling any of the conditions for classifying the service under GTA, they however, appeared to fulfill all the features of the definition of 'Supply of Tangible Goods' service. It, therefore, appeared that the appellant was required to pay service tax on the amount received by them in the name of vehicle hire receipt/transportation charges, which they had not paid. It appeared that the appellant had not paid service tax amounting to Rs.43,57,876/- during the F.Y.2015-16 to F.Y.2017-18 (up to June-2017) which is required to be demanded and recovered from them.

3. Therefore, the appellant was issued Show Cause Notice No. V.ST/11A-274/R.L. Agarwalla/2020-21 dated 08.10.2020 wherein it was proposed to demand and recover service tax amounting to Rs.43,57,876/- under the proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994; appropriation of Service Tax payment of Rs. 13,13,174/- already made. Imposition of penalty under Section 70, 77(2) and 78 of the Finance Act, 1994 was also proposed.

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

- i. Receipts totaling to Rs.2,16,37,043/- shown under head 'Vehicle Hire Receipts' during the F.Y. 2015-16 to F.Y. 2017-18 (upto June-17) was considered as taxable income;
- ii. Receipts totaling to Rs.3,16,98,739/- received for laying & maintenance of underground oil & gas pipelines to M/s. ONGC and Flow lines /trunk pipelines / installation work and civil works to ONGC shown under head 'Works Contract' during the F.Y. 2015-16 to F.Y. 2017-18 (upto June-17) was considered as taxable income;
- iii. Receipts of Rs.14,20,962/- shown under head 'Works Contract' received during the F.Y. 2015-16 to F.Y. 2017-18 (upto June-17) for providing services for Effluent Treatment Plant, was considered as taxable income.
- iv. Service Tax demand of Rs.43,57,876/- was confirmed on Sr. No. (i), (ii) & (iii) above, under Section 73(1) of the Finance Act, 1994 alongwith interest under Section 75 of the Finance Act, 1994.
- v. Ordered appropriation of amount of Rs. 13,13,174/- already paid by them, against the confirmed demand of Service Tax.
- vi. Imposed Penalty of Rs.1,00,000/- under Section 70 of the Finance Act, 1994.
- vii. Imposed Penalty of Rs.10,000/- under Section 77(2) of the Finance Act, 1994.
- viii. Imposed penalty of Rs.43,57,876/- under Section 78 (1) of the Finance Act,1994.

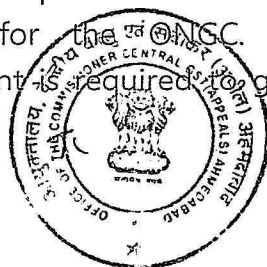
5. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the following grounds



- While preparing the reconciliation statement department has not taken in to account details & documents submitted by the appellant as per the reconciliation statement Net tax payable amount is Rs.13,97,699/-:

	WORKS CONTRACT SERVICE	SUPPLY OF TENGIBLE GOODS SERVICE	TOTAL
2015-16	180,369	1,023,313	
2016-17	61,262	47,492	
2017-18(up to june-2017)	-	85,263	
	241,631	1,156,068	1,397,699
	Challan paid amt Rs.		1,483,109
	net excess paid Rs.		(85,410)

- Appellant has been engaged in the providing of the scrapping of tubing in self flow wells to remove any obstruction in flow of oil/gases alongwith all accessories & operating crew as per work scope, for which consideration for the providing of service has been charged on the unit basis /quantity basis work done. Exploration of oil has been liable for the excise duty during the impugned period, Appellant has been working as a job worker for the manufacturing of the finished goods at site, so notice has claimed exemption from the service tax in terms of (clause-30) vide Notification No. 25/2012-ST as appropriate duty has been paid by the principal manufacturer.
- Vide 30C clause intermediate operation has been exempt from the service tax levy. So notice has not charged service tax & claimed exemption from the service tax in respect of the Contract dated 03.01.2014, Contract dated 10.08.2009 & 27.11.2014 entered with ONGC, Ankleshwar Asset, wherein they have been awarded the hiring service of scrapping winches units for Ankleshwar asset for scrapping of tubing in self flow wells to remove any obstruction in flow of oil/gas etc. alongwith all accessories and operating crew as per scope of work.
- So on the basis of Bills / Tax Invoices, it is clear that the service provide by the appellant pertain to intermediary for the manufacturing & exempt vide mega exemption, In the interest of justice request to drop the proceeding.
- They relied on the following judgments of Hon'ble Tribunals:
- 2012 (25) S.T.R. 471 (Tri. - Ahmd.)
 - 2010 (19) S.T.R. 370 (Tri. - Bang.)
 - 2013 (31) S.T.R. 611 (Tri. - Mumbai)
 - 2014 (36) S.T.R. 123 (Tri. - Mumbai)
 - 2017 (47) S.T.R. 258 (Tri. - Mumbai)
 - 2016 (42) S.T.R. 352 (Tri. - Mumbai)
 - 2018 (17) G.S.T.L. 260 (Tri. - Mumbai)
- The appellant is engaged in undertaking of transportation of material of ONGC as per contract terms, transportation contract for the ONGC. According to the contract/agreement with ONGC, the appellant is required to give certain specified



number of tankers to ONGC and at that time the appellant has given vehicles on hire. These vehicles have to be supplied as per the specification and requirement of the ONGC. As per the condition of agreement/contract Driver of the Vehicle must at least have two years driving experience on such vehicle, the Vehicle Should also have one cleaner, the appellant has to pay for the cost of the fuel, driver and cleaner but the vehicle will be in total control of ONGG and all instruction for the location of deployment of tankers shall be issued by GM-HDS,ONGC-MEHSANA-ASSET, on their direction jobs will be performed for the day, the tankers has to handle crude oil/brine/Emulsion/Mud/Operational water etc. belonging to from one place to another place of ONGC Mehsana-asset. In the evening, ONGC Mehsana receives work performance report of each vehicle. Based on work performance report of tanker at the end month the appellant prepares a single Bill for the month. Further, in the contract/agreement with the ONGC, the rate for contract has also been specified. The appellant has provided services pertaining to the transportation of material service, so the demand of service tax under supply of tangible goods has not been sustainable & tenable.

- As per classification of taxable services, the services of the appellant are classifiable under GTA due to the basic nature of providing transportation service. Therefore the appellant shall not be liable to pay service tax as the liability to pay tax falls under service recipient and in the present case it shall be ONGC as per Notification No.35/2004 dated 3.12.2004.
- The show cause notice covers the period of 01.04.2015 to 30.06.2017. The Pre-consultation SCN has been issued on 08.10.2020. Whereas department has knowledge of all the activities carried out by the notice, for which department has issued SCN for the period F.NO.V.ST/15-62/DEM/OA/15-16 DT. 05.11.2015, then again on the same issue extended period notice cannot be sustainable. Thus, the show cause notice has invoked the extended period of limitation. The show cause has baldly alleged that the Appellant has suppressed the information from the department. They relied upon the judgement of the Hon'ble Tribunal in the matter of 2006 (197) E.L.T. 465 (S.C.) IN THE SUPREME COURT OF INDIA Ashok Bhan and Markandey Katju, JJ. NIZAM SUGAR FACTORY Versus COLLECTOR OF CENTRAL EXCISE, A.P. Civil Appeal No. 2747 of 2001 with C.A. No. 6261 of 2003 and C.A. No. 2164 of 2006 @ SLP (C) Nos. 9271-9278 of 2003, decided on 20-4-2006.
- The show cause notice has proposed to impose penalty under Section 78 of the Finance Act, 1994. The Appellant has demonstrated above that they have not suppressed any information from the department and there was no willful misstatement 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 therefore penalty under Section 78 of the Act cannot be imposed.



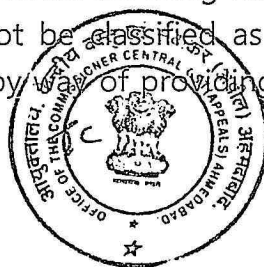
- Penalty under Section 77 is not imposable since there is no short payment of service tax. As per the merits of the case, the Appellant is not liable for payment of Service tax. They rely on the various judgments of Hon'ble Courts and Tribunal.

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 submissions made in the appeal memorandum and the additional submissions dated 18.08.2023 handed over at the time of personal hearing. He also submitted that the appellant provided rent a cab service to the corporate where liability to pay service tax was on the recipient. In addition, the appellant was also providing works contact services to the corporate clients and had discharge his tax liability by filing service tax return. The short payment notice by the appellant was also paid suo-motu prior to the present proceedings. The original authority has passed the impugned order on the basis of income tax data on the differential income without any verification. The original authority has not considered the service tax payment challan produced by the appellant before him and also has not accepted the rent a cab service and classified as a supply of tangible goods. In this regard, the appellant has produced a copy of the agreement and stated that the appellant was providing driver and bearing all the incidental expenses in rent a cab to provision of the service. Therefore, this service cannot be considered as supply of tangible goods. In view of above we requested to set aside the impugned orders and allowed the appeal.

6.1 On account of change in appellate authority personal hearing was again scheduled on 13.10.2023. Shri Vipul Khandhar, Chartered Accountant, appeared for personal hearing on behalf of the appellant. He reiterated the contents of the written submission 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, additional written submissions, 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.43,57,876/- 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 from F.Y. 2015-16 to F.Y. 2017-18 (upto June-2017).

7.1 With regard to the demand of **Rs.32,07,426/-** the adjudicating authority held that the appellant has been awarded the work orders for 'Hiring of vehicles for goods transportation. Accordingly, they supplied various types of vehicles to M/s. ONGC Ltd for transportation of material/goods such as pipes, equipment, machinery etc. on monthly fixed charge basis. They have not issued any LR or Consignment Note for the goods transported by M/ s. ONGC Ltd. in their hired vehicles, as required under sub-clause (26) of Section 65B of the Act. The appellant issue only monthly bills for hiring charges for vehicles supplied to M/s. ONGC under the agreement. This indicates that the appellant has not been given the work order for transportation of goods, but they have only been given the work order for hiring of vehicles which the customer would be using for transportation of goods. Hence, the services provided by them cannot be classified as Goods Transport Agency. Thus the service provided by the appellant by way of providing of winches units



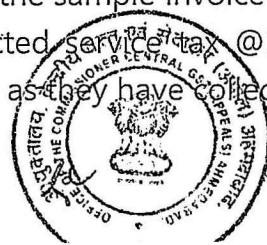
/trailers / vehicles etc. as per the specification and condition of M/s ONGC Ltd., Mehsana-asset, shown under the head of "Vehicle Hire Receipt" is appropriately covered within the ambit of 'Supply of Tangible goods', listed in Section 66E (f) of the Finance Act, 1994 and chargeable to Service Tax accordingly.

7.2 I have gone through the Contracts dated 24.09.2014 and 16.3.2016 entered by the appellant with ONGC. As per the contract the vehicles are hired by ONGC excluding driver and monthly charges are paid on the Kms basis. The Board vide Circular No.198/8/2016-S.T., dated 17-8-2016, had clarified that in any given case involving hiring, leasing or licensing of goods, it is essential to determine whether, in terms of the contract, there is a transfer of the right to use the goods. Further, the Supreme Court in the case of *Bharat Sanchar Nigam Limited v. Union of India*, reported in 2006 (2) S.T.R. 161 (S.C.), had laid down the following criteria to determine whether a transaction involves transfer of the right to use goods, namely, -

- a. There must be goods available for delivery;
- b. There must be a consensus *ad idem* as to the identity of the goods;
- c. The transferee should have a legal right to use the goods - consequently all legal consequences of such use, including any permissions or licenses required therefor should be available to the transferee;
- d. For the period during which the transferee has such legal right, it has to be to the exclusion to the transferor this is the necessary concomitant of the plain language of the statute - viz. a "transfer of the right" to use and not merely a licence to use the goods;
- e. Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same right to others.

7.3 As per the above contract with ONGC, I find that ONGC have a legal right to use the goods/vehicles, including any permissions or licenses required thereof is also available to them. The appellant however claim that the above contract fall under GTA service. But it is observed that the appellant never transported the goods as they never issued consignment notes to this effect, hence, their above contention is not acceptable. The contracts clearly mentioned that the vehicles were hired and not rented hence the argument put forth by the appellant that the service can be classified under Rent-A-Cab Service is also not acceptable.

7.4 Further, appellant have contended that as per Contract dated 03.01.2014, Contract dated 10.08.2009 & 27.11.2014 entered with ONCG, Ankleshwar Asset, they have been awarded the hiring service of scrapping winches units for Ankleshwar asset for scrapping of tubeing in self flow wells. They claim that said service is exempted from service tax as is intermediate production process. I have gone through the sample invoice dated 31.5.2014 and 02.04.2014 and find that the appellant has collected service tax @12.36%, so their argument that they falls under exemption is not tenable as they have collected tax.



7.5 It is observed that the appellant has heavily relied on the decision passed in the case of Narendra Road Lines Pvt. Ltd- 2022 (64) GSTL 354 (Tri-All). The said decision is not applicable to the present case as there the assessee was providing vehicles to other GTA service providers who in turn issued consignment notes to their clients hence it was held that the transfer of vehicles with their possession and control by GTA service providers to their clients was not taxable as supply of tangible goods services. Thus, I find that the demand of **Rs.32,07,426/-** is sustainable on merits.

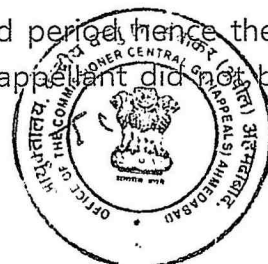
8. As regards the demand of **Rs. 9,41,822/-**, the adjudicating authority held that the appellant has provided the Works Contract Services for (i) laying and maintenance of underground oil and gas pipelines to M/s ONGC Ltd. for their Ankleshwar Mehsana Assets (Gujarat) and (ii) flow lines /trunk pipelines/installation Works/colony gas pipeline works and civil works to M/s ONGC Ltd. for their Ahmedabad Asset (Gujarat) and charged amount of Rs.6,44,99,199/- from M/s ONGC Ltd. during said period. He held that out of this amount, the amount of Rs.3,28,00,460/- pertained to Shiv Sagar Asam, ONGC-Jorhat (Assam), Oil India- Dullianjan (Assam) and Water Treatment Plant, Shiv Sagar. Hence, after reducing this amount, net amount of Works Contract arrived was Rs.3,16,98,739/-. He held that the appellant has provided erection, commissioning and installation services with materials to ONGC Ltd and charged gross amount, including the value of labour service and materials from them. Thus, the above services are taxable under Works Contract services. The adjudicating authority in terms of Rule 2A of the Service Tax (Determination of Value) Rules, 2006, granted 60% abatement on the total amount charged considering the work as original work after granting RCM benefit in terms of Notification No.30/2012-ST dated 20.06.2012 confirmed the demand on 50% of the tax liability.

8.1 The appellant did not submit any defence contesting the above demand before the adjudicating authority nor did they submit any grounds contesting the said demand in their appeal memorandum. I, therefore, do not interfere in the findings of the adjudicating authority and uphold the demand of **Rs. 9,41,822/-** alongwith interest.

9. As regards the non-payment of service tax of **Rs.2,08,627/-** on services provided in relation to Effluent Treatment Plant, the adjudicating authority held that the said activity falls under the definition of service hence the appellant is liable to pay service tax of **Rs.2,08,627/-**.

9.1 The appellant did not submit any defence contesting the above demand before the adjudicating authority nor did they submit any grounds contesting the said demand in their appeal memorandum. I therefore do not interfere in the findings of the adjudicating authority and uphold the demand of **Rs.2,08,627/-** alongwith interest.

10. The appellant have strongly contested that the demand of Rs. 43,57,38,76/- falls on the grounds of limitation as already earlier two SCNs were issued to them covering demand for the F.Y. 2010-11 to F.Y. 2013-14 and F.Y. 2014-15. It is observed that the appellant had filed the ST-3 returns for (1st & 2nd Half year for the F.Y. 2015-16, F.Y. 2016-17 and F.Y. 2017-18 (April to June). However, all these returns pertained to Assam Registered unit and were filed before Dibrugarh New Commissionerate. However, ST-3 returns for Mehsana Unit were not filed for the disputed period hence the demand has been raised based on the financial records. Further, the appellant did not bring anything



on record to establish that the demand for earlier period pertained to same issues. I therefore find that suppression can be invoked as the appellant has not declared the income in ST-3 returns of the disputed period. The demand is thus sustainable on limitation as well.

11. When the demand sustains there is no escape from interest, the same is therefore recoverable with applicable rate of interest on the tax held sustainable in the paras supra.

12. I find that the imposition of penalty under Section 78 is also justifiable as it provides penalty for suppressing the value of taxable services. Hon'ble Supreme Court in case of *Union of India v/s Dharamendra Textile Processors* reported in [2008 (231) E.L.T. 3 (S.C.)], concluded that the section provides for a mandatory penalty and leaves no scope of discretion for imposing lesser penalty. I find that the appellant was rendering a taxable service but did not file the statutory returns. This act thereby led to suppression of the value of taxable service and such non-payment of service tax undoubtedly brings out the willful mis-statement and fraud with intent to evade payment of service tax. If any of the circumstances referred to in Section 73(1) are established, the person liable to pay tax would also be liable to pay a penalty equal to the tax so determined.

13. As regards, the imposition of penalty under Section 70 is concerned; I find that the same is also imposable. The appellant were rendering the taxable service and were liable to pay service tax and file ST-3 returns. However, they failed to file ST-3 Return (2 returns for F.Y. 2015-16, two returns for F.Y. 2016-17 and one return for F.Y. 2017-18 (upto June) in terms of Rule 7C. Hence, I find that delay in filing five returns make them liable to a penalty of Rs.1,00,000/-.

14. As regards the imposition of penalty under Section 77(2) is concerned, I find that the same is also imposable as the appellant were rendering the taxable service but failed to correctly assess their tax liability by filing incorrect ST-3 Return, hence are liable for penalty of Rs.10,000/-.

15. In view of the above discussion, I uphold the impugned order confirming the service tax demand of **Rs.43,57,876/-** alongwith interest and penalties.

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.C.J.
18.12.2023
(ज्ञानचंद जैन)

आयुक्त (अपील्स)

सत्यापित/Attested :

रेखा

रेखा नायर

अधीक्षक (अपील्स)

सी जी एस टी, अहमदाबाद

Date: 18th December, 2023



By REGD/SPEED POST A/D

To,

M/s. R.L. Agarwalla & Co,
F-34, Wide Angle, Highway,
Mehsana – 384002.

Appellant

The Assistant Commissioner,
CGST, Division Mehsana
Ahmedabad

Respondent

Copy to: -

1. The Principal Chief Commissioner, CGST & C.Ex., Ahmedabad Zone.
2. The Commissioner, CGST & C.Ex., Commissionerate: Gandhinagar.
3. The Deputy/Assistant Commissioner, CGST & C.Ex., Division-Mehsana, Commissionerate: Gandhinagar.
4. The Superintendent (System), CGST, Appeals, Ahmedabad. (for uploading the OIA).
5. Guard File.
6. P.A. File.

