



आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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(क)	फाइल संख्या / File No.	GAPPL/COM/STP/4566/2023-APPEAL/310-314
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-172/2023-24 and 27.12.2023
(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	03.01.2024
(ङ)	Arising out of Order-In-Original No. 08/ST/OA/ADJ/2023-24 dated 30.05.2023 passed by the Assistant Commissioner, CGST, Division - Himmatnagar, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Rajkapoor Shrichhatrapal Sharma, 43, New Market Yard, Khed-Tasiya Road, Himmatnagar - 383001

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 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 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 और 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) एक प्रति अपीलो 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

M/s. Rajkapoor Shrichhatrapal Sharma, 43, New Market Yard, Khed-Tasiya Road, Himatnagar-383001, Sabarkantha (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. 08/ST/OA/ADJ/2023-24 dated 30.5.2023, (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-Himmatnagar, Gandhinagar Commissionerate (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in providing taxable service and were holding PAN No.BKYP52766Q.

2. The facts of the case, in brief, are that on the basis of the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16, it was noticed that the appellant in the ITR/Form-26 AS has earned taxable income on which no service tax was discharged. Letters were, therefore, issued to the appellant to explain the reasons for non-payment of tax and to provide certified documentary evidences for said period. The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts. The detail of the income is as under;

Table-A

<i>F.Y.</i>	<i>Value shown in Form-26AS and value as per ITR</i>	<i>Service tax rate</i>	<i>Service Tax liability</i>
2015-16	1,19,14,553/-	14.5%	17,27,610/-

2.1 A Show Cause Notice (SCN) No. V/15-75/CGST/HMT/O&A/2021-22 dated 23.04.2021 was therefore issued to the appellant proposing recovery of service tax amount of Rs. 17,27,610/- along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalties under Section 77(1) and Section 78 of the Finance Act, 1994 was also proposed.

2.2 The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs. 17,27,610/- was confirmed alongwith interest. Penalty of Rs.10,000/- under section 77(1) and penalty of Rs. 17,27,610/- was also imposed under Section 78 of the F.A., 1994.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant preferred the present appeal on the grounds elaborated below:-

- The appellant is a sole proprietor engaged in the business of transport of goods by road services.
- In terms of Sl. No. 2 of Notification No.30/2012—ST dated 20.06.2012, 100% liability to pay service tax is on the service recipient. The services were rendered to clients who fall under sub-clause (a) to (f) of clause (ii). Sample copies of consignment note for reference.
- The income of Rs.9,54,684/- has been received in cash. The Appellant has taken trucks from truck owners on hire/ rent and whenever required, such trucks were given on hire/ rent to another transporters on need basis. The income of Rs.

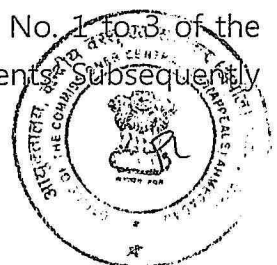


9,54,684/- is related to trucks given on hire to other transporters. In terms of Mega Exemption Notification No 25/2012 dated 20 June, 2012, hiring of trucks is exempt from service tax and thus no service tax liability shall arise on income of Rs 9,54,684/-.

- The appellant also claim SSI exemption under Notification No.33/2012-ST dated 20.6.2012.
- As per Notification No 26/2012 - ST dated 20 June, 2012, amended vide Notification No 8/2014 -ST dated 11 July, 2014 and Notification No 8/2015 - ST dated 1 March, 2015, in case of goods transport agency services, service tax shall be levied only on 30% value of services and remaining 70% of the value of services shall be exempt from service tax. This is subject to the condition that cenvat credit on inputs, input service and capital goods shall not be taken by the service provider. As the appellant has not taken any CENVAT credit of any input, input service and capital goods and thus, even if it is assumed that the Appellant is liable to pay service tax, the Appellant shall be entitled to the abatement of 70% of value of taxable service and liability shall be restricted to 30% of value of services provided.
- In terms of Section 68(2) and the aforesaid notifications the appellant is not liable to pay service tax and thus not mandated to obtain service tax registration.
- When there is no tax liability, interest is not recoverable and nor penalty imposable. The Appellant would like to state that there are various judicial precedents which have held that penalty is not imposable in case where there was no malafide intention of the assessee and where he had exercised reasonable care. The Appellant did not have any malafide intention as he was not liable to pay service tax itself. The Delhi Tribunal in case of Sainik Mining and Allied Services Ltd Vs Commissioner of S.T, Delhi [2019 (28) G.S.T.L. 156 (Tri. - Del.)] held that the question of imposition of penalty does not arise in case there is no positive act of suppression of facts or which may reflect any mala fide on assessee's part with intention of evading tax alleged.

5. Personal hearing in the matter was held on 15.12.2023. Shri Kalpit Mehta, Chartered Accountant appeared for personal hearing on behalf of the appellant and reiterated the submissions made in the appeal. He stated that the appellant is GTA. Hence liability is on receiver under RCM. He sought 3 days time to submit additional documents.

5.1 The appellant vide letter dated 18.12.2023, submitted a C.A. certificate issued by K. S. Mehta & Associates certifying that the appellant was running business of GTA during the F.Y. 2015-16 and has realized Gross receipts of Rs.1,19,14,553/- from GTA service. They certified that based on the verification of Books of Accounts, Consignment Notes and Bank Accounts for the F.Y. 2015-16, the liability to pay service tax lies on the service recipient on RCM basis for the value of services listed at Sr. No. 1 to 3 of the table above. They also submitted Form-26AS as supporting documents. Subsequently



vide e-mail dated 29.12.2023, they submitted the Profit & Loss Account of the appellant for the F.Y. 2014-15 and F.Y. 2015-16 and the ledgers of various service recipients.

6. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made by the appellant in the appeal memorandum, additional submissions as well as those made during personal hearing. The issue to be decided in the present case is whether the demand of **Rs.17,27,610/-** confirmed vide the impugned order alongwith interest and penalties, in the facts and circumstances of the case, is legal and proper or otherwise. Period of dispute involved is F.Y.2015-16.

6.1 It is observed that K. S. Mehta & Associates, Chartered Accountants (UDIN: 231414798GWAEH8964) have certified that the appellant was running business of GTA and has realized gross receipts of Rs.1,19,14,553/- during the F.Y. 2015-16. They also provided detailed bifurcation of services provided by the appellant to various clients.

Sr.No.	Nature of Recipient	Value of service
1	Partnership Firms	1,38,408/-
2	Body Corporates	98,67,181/-
3	Other Goods Transport Agencies	9,54,684/-
4	Other recipients not included above	9,54,280/-
	TOTAL	11,94,553/-

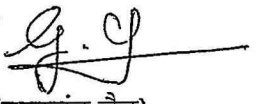
They certified that based on the verification of Books of Accounts, Consignment Notes and Bank Accounts for the F.Y. 2015-16, the liability to pay service tax lies on the service recipient on RCM basis for the value of services listed at Sr. No. 1 to 3 of the table above. They also submitted Form-26AS as supporting documents. Hence, the appellant is not liable to pay service tax for the value of services listed at Sr.No.1 to 3.

6.2 From the C.A. certificate, it is seen that '*other recipient not included above*' category has turnover of Rs.9,54,280/- which is below the threshold limit as per Notification No.33/2012 dated 20.06.2012. Hence, the appellant is not liable to pay service tax for the value of service listed at Sr.No.4 of the table.

6.3 As the appellant is not liable to pay service tax, the question of interest and penalty also does not arise.

7. In view of my above discussions and findings, I set-aside the impugned order and allow the appeal filed by the appellant.

8. 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.


(ज्ञानचंद जैन)
आयुक्त(अपील्स)

Date: 28.12.2023



Attested



(रेखा नायर)

अधीक्षक (अपील्स)

केंद्रीय जी. एस. टी, अहमदाबाद

By RPAD/SPEED POST

To,

M/s. Rajkapoor Shrichhatrapal Sharma,
43, New Market Yard, Khed-Tasiya Road,
Himatnagar-383001,

Appellant

The Assistant Commissioner
CGST, Division-Himmatnagar,
Gandhinagar

Respondent

Copy to:

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



