



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:- 20240164SW000000B2E9

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/3023/2023-APPEAL / 729-38
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-181/2023-24 and 11.01.2024
(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	12.01.2024
(ङ)	Arising out of Order-In-Original No. AHM-CEX-003-JC-SP-014-22-23 dated 20.02.2023 passed by the Joint Commissioner, CGST & Central Excise, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Vimal Transport, 2, Vimalpark Society, B/h Rajkamal Petrol Pump, 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:-

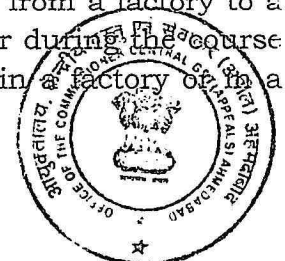
Revision application to Government of India:

(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, 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 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.

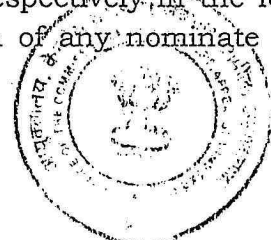
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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."



अपीलिय आदेश/ ORDER-IN-APPEAL

The present appeal has been filed by M/s Vimal Transport, 2, Vimalpark Society, B/h Rajkamal Petrol Pump, Highway, Mehsana, Gujarat-384002 [*hereinafter referred to as "the appellant"*] against Order in Original No. AHM-CEX-003-JC-SP-014-22-23 dated 20.02.2023 [*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. AAFFV0672A and were not registered under Service Tax. As per data received from Income Tax Department, 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, letter dated 17.09.2021 and email dated 13.09.2021, 04.10.2021 & 11.10.2021 were sent to the appellant calling for the details of services provided during the period F.Y. 2016-17. Personal Hearing for Pre-SCN Consultation was fixed on 21.10.2021, but the appellant neither attended nor sought any adjournment. Thereafter, the jurisdictional officers considered that the services provided by the appellant during the relevant period as taxable and determined the tax liability 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 :

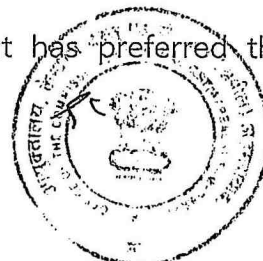
TABLE

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	7,22,34,872/-	15%	1,08,35,231/-

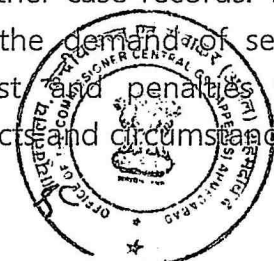
3. The appellant was issued Show Cause Notice No. GEXCOM/ADJN/ST/ADC/1374/2021-ADJN dated 22.10.2021 (in short SCN) proposing to demand and recover Service Tax amounting to Rs.1,08,35,231/- under proviso to Section 73 (1) of Finance Act, 1994 along with interest under Section 75 of the Act. The SCN also 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, the Service Tax demand of Rs.1,31,71,143/- was confirmed for the period of F.Y. 2016-17 & F.Y. 2017-18 (upto to 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/- each was imposed under Section 77(1)(a); Section 77 (1) (c) & Section 77(2) of the Finance Act, 1994. Penalty of Rs.1,31,71,143/- 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 are engaged in providing transportation services and issued consignment notes wherein it was mentioned that service tax would be payable by consignee. Copies of such consignments is produced for peruse. Any goods transport agency which provides services in relation to transport of goods by road in goods carriage shall issue a consignment note to the customer.
 - Under reverse charge notification no. 30/2012 dated 20.06.2012, full service tax shall be paid by the person liable for paying service tax other than the service provider after considering abatement. Further, abatement for GTA service as provided under notification no. 26/2012 dated 20.06.2012 as amended from time to time is 70% and therefore 30% of service tax is liable to be paid.
 - As per Service Tax Rules, 1994, the person who pays or is liable to pay freight, either himself or through his agent, for the transport of goods by road in a goods carriage, has been made liable to pay service tax. But, if the person liable to pay freight is located in non-taxable territory, then the person liable to pay service tax shall be the service provider.
 - In terms of Notification No.30/2012 – Service Tax, dated 20.06.2012, an individual/proprietorship firm is not covered in the above 'specified category'. It means, if the freight is paid (either himself or through his agent) an individual/proprietorship firm or HUF then the service tax thereon shall not be paid by individual/proprietorship firm or HUF.
 - The department has computed demand of service tax for the period of 2016-17 on the basis of income tax return data. Against which the appellant wants to state that while considering the income with books of accounts, the department has not taken into factual details regarding the appellant was providing transportation service wherein the service tax was to be paid by the service recipient only. Without considering the factual details, the department has raised the demand which is not justifiable at all. Further, they rely on the various judgment of Hon'ble Courts and Tribunal.
6. Personal Hearing in the case was held on 18.12.2023. Shri Vipul Khandhar, Chartered Accountant, appeared for personal hearing and reiterated the contents of the written submission. He stated that his client is providing transport service to Vimal Oil and Food who are corporate and registered with Central Excise and Service Tax Department and as a recipient is liable to payment of Service Tax.
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.1,31,71,143/- confirmed 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 was engaged in providing services by way of "Goods Transportation Agency" in respect of transportation of goods by road and issued the consignment notes for their services during the period F.Y. 2016-17 & F.Y. 2017-18 (upto June-2017). They claim that applicable service tax would be payable by consignee in terms of Notification No. 30/2012-ST dated 20.06.2012.

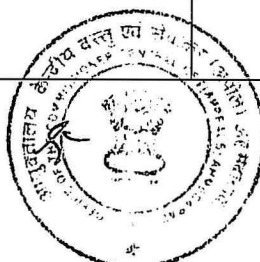
8.1 Goods Transport Agency (GTA) means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called. Generally, service tax is payable by the provider of service. However in Reverse Charge Mechanism Service Receiver is made liable to pay service tax and comply with other provisions of Finance Act, 1994. In case of GTA, a person liable to pay the freight for the transport of goods has also been made liable to pay service tax.

8.2 In terms of Rule 2(1)(d) of the Service Tax Rules, 1994, the service tax shall be paid by such person and in such manner as has been prescribed at the rate specified in Section [66B]. In terms of reverse charge mechanism (Notification No.30/2012-ST dated 20.06.2012), in the case where the taxable service provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, then 100% liable to pay freight shall be on the service recipient, if they fall under following categories.

- (a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
- (b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;
- (c) any co-operative society established by or under any law;
- (d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;
- (e) any body corporate established, by or under any law; or
- (f) any partnership firm whether registered or not under any law including association of persons;

TABLE

Sl. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
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%



Explanation-1 of the notification also clarifies that the person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification. Relevant text is reproduced below;

Explanation-I. - The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification

8.3 The appellant has produced copy of consignment notes issued by them to various clients. On going through these consignment notes, I find that except the quantity of goods, there is no mention of freight charges, no mention as to who shall pay the freight charges, no mention of service tax registration number etc. So, I find that the appellant is not providing any GTA service. Infact they are renting their goods carriage on rent to various clients. This fact is evident from the Profit & Loss Account of F.Y. 2016-17, wherein the appellant have shown the 'Transport Rent Income' of Rs. 7,22,22,566/-. It is observed that the appellant is not registered under GTA service but has rented out their goods carriage to various clients for which they received rent. Thus, I find that the exemption claimed by the appellant under Notification No.25/2012-ST and Notification No.30/2012-ST are not available to them. As the appellant is not rendering the GTA service, I find that they are liable to pay service tax on such rent income under forward charge.

8.4 Further, I find that the appellant is also not liable to exemption under Notification No.25/2012-ST for hiring services. In terms of Entry No.22, the exemption is available if the vehicle is given on hire to a GTA. In the instant case, the appellant has given the vehicles on hire to the clients who are not Goods Transport Agencies. Hence, the benefit of above notification cannot be extended to them. Relevant entry of the notification is produced below:-

22. Services by way of giving on hire –

(a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or

(b) to a goods transport agency, a means of transportation of goods;

9. In view of the above discussion and findings, I find that the appellant not being a GTA service provider is liable to discharge the tax liability of **Rs.1,31,71,143/-**. When the demand sustains there is no escape from interest liability. Hence, I find that the same is recoverable.

10. 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 failed to obtain registration and assess their tax liability correctly with intent to evade the taxes. They did not file any ST-3 Return. All these acts 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 above.

11. As regards the imposition of penalty under Section 77(1) (a), Section 77(1)(c) & Section 77(2) is concerned, I find that the same are also imposable as the appellant were rendering the taxable service and were liable to take registration, which they failed to do. They also failed to provide the information and documents called for by the Central Excise Officer and also failed to correctly assess their tax liability, failed to file ST-3 Return. I, therefore, uphold the penalty of Rs.10,000/- each imposed under Section 77(1) (a), Section 77(1)(c) & 77(2) of the Finance Act, 1994.

12. In view of the above discussion, the impugned order is upheld.

13. 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)

Dated: 11th January, 2024

सत्यापित/Attested :



रेखा नायर

अधीक्षक (अपील्स),

सी जी एस टी, अहमदाबाद

By REGD/SPEED POST A/D



To,

M/s Vimal Transport,

2, Vimalpark Society,

B/h Rajkamal Petrol Pump,

Highway, Mehsana,

Gujarat-384002.

Appellant

The Joint Commissioner,

CGST & CEX, Gandhinagar Commissionerate

Respondent

Copy to:

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