



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



By SPEED POST

DIN:- 20240264SW0000444FDE

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/4575/2023-APPEAL / 1505-1505
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-194/2023-24 and 08.02.2024
(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	09.02.2024
(ङ)	Arising out of Order-In-Original No. 102/ST/OA/ADJ/2022-23 dated 27.03.2023 passed by the Assistant Commissioner, CGST, Division - Himmatnagar, Commissionerate - Gandhinagar	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s J K Transport, 1, Sarav Complex, Nr. Vyaparbhavan, Nyaymandir, Himmatnagar, Sabarkantha – 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:-

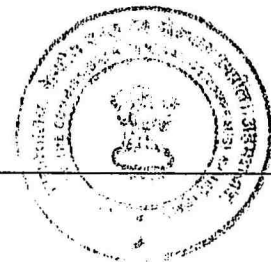
Revision application to Government of India:

(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 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 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.

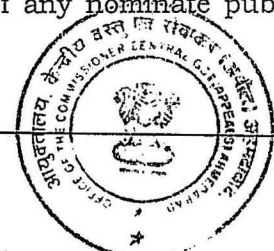
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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।

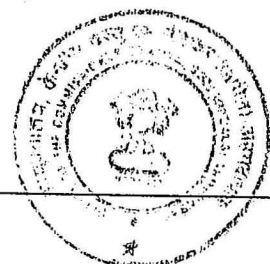
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



अपीलिय आदेश/ ORDER-IN-APPEAL

The present appeal has been filed by M/s J K Transport, 1, Sarav Complex, Nr. Vyaparbhavan, Nyaymandir, Himmatnagar, Sabarkantha – 383001 [hereinafter referred to as “the appellant”] against Order in Original No. 102/ST/OA/ADJ/2022-23 dated 27.03.2023 [hereinafter referred to as “the impugned order”] passed by the Assistant Commissioner, CGST, Division - Himmatnagar, Commissionerate - Gandhinagar [hereinafter referred to as “the adjudicating authority”].

2. Briefly stated, the facts of the case are that the appellant were registered under Service Tax registration no. AFCPM2310NSD001 and engaged in providing of service falling under the category of Transport of Goods by Raod/ Goods Transport Agency. As per information received from the Income Tax Department, it was observed that during the period F.Y. 2016-17, the appellant had declared less the gross value of Sale of Services in ST-3 returns than the gross value of Sale of Services in Income Tax Returns / TDS Returns. Accordingly, in order to seek information, letter was 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 determined the Service Tax liability for the F.Y. 2016-17 on the differential value of 'Sales of Services' under Sales/Gross Receipts from Services (Value from ITR) / Form 26AS & ST-3 as details below :

Sr. No.	Period (F.Y.)	Differential Taxable Value as per Income Tax Data (in Rs.)	Rate of Service Tax incl. Cess	Service Tax liability to be demanded (in Rs.)
1.	2016-17	2,00,65,612/-	15%	30,09,842/-

3. The appellant was issued Show Cause Notice No. V/15-21/CGST-HMT/O&A/20-21 dated 30.06.2020 (in short SCN) proposing to demand and recover Service Tax amounting to Rs.30,09,842/- 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 78 of the Finance Act, 1994.

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

- Service Tax demand of Rs.6,01,484/- was confirmed under Section 73(1) of the Finance Act, 1994 alongwith interest under Section 75 of the Finance Act, 1994 and the demand of Rs.24,08,358/- was dropped.



- Penalty of Rs.6,01,484/- 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:

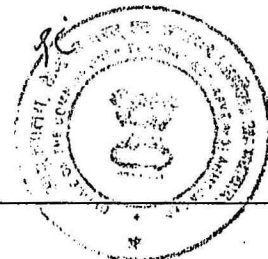
- The appellant have provided Goods Transport Services to M/s Hi Bond Cement (India) Pvt Ltd. amounting to Rs. 2,00,65,638/- for which they are not liable to pay Service Tax as the said company paid the service tax as a recipient of service under RCM.
- They submitted their financial statement, books of accounts, consignment note, contract copy, ITR, Form 26AS, Bank Statement and certificate issued by M/s Hi Bond Cement (India) Pvt Ltd.

6. Personal Hearing in the case was held on 24.01.2024. Md. Altaf Sachora, 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 submission 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.6,01,484/- 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. Examining the submissions made by the appellant, I find that they were acting as a "Goods Transport Agency" for M/s Hi-Bond Cement (India) Pvt. Ltd., transporting cement by road during the F.Y. 2016-17, as per the terms of Contract No. HBC/Logistics/2016-17/03, dated 01.01.2016.

8.1 I find that they used to issue consignment note in their capacity as a goods transport agency, in which it is stated that the consignor, M/s Hi-Bond Cement (India) Pvt. Ltd., will pay service tax as a recipient of service on ~~an~~ RCM basis in terms of Notification No. 30/2012-ST dated 20.06.2012. In support of their claim,



they submitted the sample copy of consignment note, sales ledger, P&L A/c, Balance Sheet, Form 26AS and Contract dated 01.01.2016 made between the appellant & M/s Hi-Bond Cement (India) Pvt. Ltd.

8.2 I find that in Form 26AS, M/s Hi-Bond Cement (India) Pvt. Ltd. was the only entity that deducted TDS under Section 194C of the Income Tax Act, 1961. It further reveals that M/s Hi-Bond Cement (India) Pvt. Ltd. was the only recipient of the transportation service or the transportation service was exclusively given to M/s Hi-Bond Cement (India) Pvt. Ltd. as per the terms of Contract No. HBC/Logistics/2016-17/03, dated 01.01.2016.

8.3 I find that the SCN in the case was issued only on the basis of data received from the Income Tax department. The appellant declared Sales of Services amounting to Rs.2,00,65,612/- in their Income Tax Return and considering the same as taxable the SCN was issued without any verification. On examining of Para 17.3 of the impugned order, I find that the adjudicating authority did not consider the amount Rs.40,09,893/- out of Rs.2,00,65,612/- fit for exemption by virtue of RCM in the absence of supportive documents i.e. payment particulars, ledgers etc. However, I find that the appellant has submitted the Sales Ledger of M/s Hi-Bond Cement (India) Pvt. Ltd. in respect of the appellant's transaction with their company, wherein it is found that M/s Hi-Bond Cement (India) Pvt. Ltd. made the payment amounting to Rs.2,00,65,612/- {2,06,40,172 – 5,74,560 (opening balance)} in the name of 'freight outward – cement' during the period of F.Y.2016-17.

8.4 I find that the appellant claimed that the liability of Service Tax arising out of the freight income of Rs.2,00,65,612/- is to be borne by the service recipient on RCM basis in terms of Notification No. 30/2012-ST dated 20.06.2012. They also provided a certificate issued by M/s Hi-Bond Cement (India) Pvt. Ltd mentioning that the recipient is liable to pay the service tax on transportation charges paid during the F.Y. 2016-17.

9. Now the issue to be decided is the fitness of the provisions of the Notification No. 30/2012-ST dated 20.06.2012 in the instant matter. Therefore, the relevant portion of the notification is reproduced below:



Government of India
Ministry of Finance
(Department of Revenue)
Notification No. 30/2012-Service Tax

New Delhi, the 20 th June, 2012

GSR(E).-In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2012- Service Tax, dated the 17 th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 213(E), dated the 17 th March, 2012, and (ii) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2004-Service Tax, dated the 31 st December, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 849 (E), dated the 31 st December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely:-

I. The taxable services,-

(A) (i)

(ii) **provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,-**

- (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;

.....
(II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely:-

Sr. 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 %

Examining the above legal provisions with the facts of the case, I find that the appellants are eligible for the benefit of the exemption on the transportation / freight income earned by them by virtue of the above provision.

10. In view of the above, I am of the considered view that since, Service Tax is to be borne by the Service recipient on RCM basis in terms of Notification No. 30/2012-ST dated 20.06.2012, accordingly, I hold that the appellant is eligible for exemption from Service Tax and the demand of Service Tax amounting to Rs.6,01,484/- confirmed vide impugned order is not sustainable legally and is liable to be set aside.



As the demand of Service Tax is unsustainable, the question of interest and penalty does not arise.

11. Accordingly, the impugned order is set aside and the appeal filed by the appellant is allowed.

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

G.C.J.
08.02.24
ज्ञानचंद जैन

आयुक्त (अपील्स)

Dated: ____ February, 2024

सत्यापित/Attested :

[Signature]
मनीष कुमार
अधीक्षक (अपील्स)
सी जी एस टी, अहमदाबाद



By REGD/SPEED POST A/D

To,

M/s J K Transport,
1, Sarav Complex, Nr. Vyaparbhavan,
Nyaymandir, Himmatnagar,
Sabarkantha – 383001.

Copy to :

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