



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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आजादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20240264SW0000444F0D

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/3021/2023-APPEAL / 18 22-81
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-197/2023-24 and 26.02.2024
(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	28.02.2024
(ङ)	Arising out of Order-In-Original No. KLL DIV/ST/YOGENDRA SINGH RAWAT/216/22-23 dated 27.03.2023 passed by the Assistant Commissioner, CGST, Division – Kalol, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Dev Transport Co. (Prop. Gurdev Satbirsingh Sharma), F/5, 2nd Floor, Priya Avenue, Above HDFC Bank, GIDC Chhatral, Kalol, Gandhinagar, Gujarat-382729

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:-

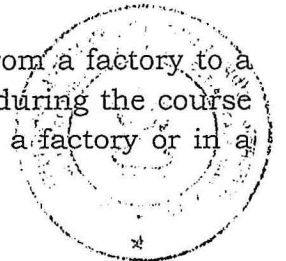
Revision application to Government of India:

(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.

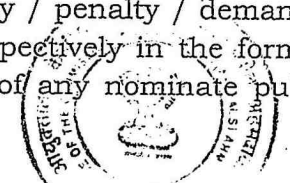
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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 रू 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।

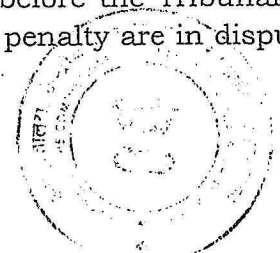
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 Dev Transport Co. (Prop. Gurdev Satbirsingh Sharma), F/5, 2nd Floor, Priya Avenue, Above HDFC Bank, GIDC Chhatral, Kalol, Gandhinagar, Gujarat-382729 [hereinafter referred to as "the appellant"] against Order in Original No. KLL DIV/ST/YOGENDRA SINGH RAWAT/216/22-23 dated 27.03.2023 [hereinafter referred to as "the impugned order"] passed by the Assistant Commissioner, CGST, Division – Kalol, Gandhinagar Commissionerate [hereinafter referred to as "the adjudicating authority"].

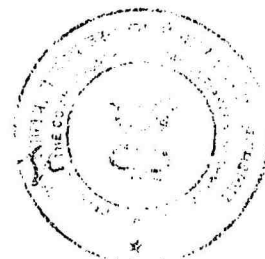
2. Briefly stated, the facts of the case are that the appellant were registered under Service Tax having Registration No. DGOPS8704QSD001 and were engaged in the services falling under the category of "Transportation". As per information received from Income Tax Department, it was observed that during the period F.Y. 2016-17 the appellant had earned substantial service income but not paid service tax thereon. Accordingly, in order to verify the said discrepancy, letters dated 01.04.2021, 09.09.2021 & 07.10.2021 were issued to the appellant calling for the details of services provided during the period. But, no reply was submitted by them. In absence of any data, the jurisdictional officer considering the services provided by the appellant during the relevant period as taxable under Section 65 B of the Finance Act, 1994 determined the Service Tax liability on the differential value of 'Sales of Services' under Sales/Gross Receipts from Services (Value from ITR), Form 26AS and 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 payable but not paid (in Rs.)
1.	2016-17	3,29,79,631/-	15%	49,46,945/-

3. The appellant was issued Show Cause Notice No. V/15-12/SCN/DEV-Transport Co./21-22 dated 20.10.2021 (in short SCN) proposing to demand and recover Service Tax amounting to Rs.49,46,945/- for the period F.Y. 2016-17, 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 77(1)(b), Section 77(1)(c)(i), Section 77(1)(c)(ii), Section 77(2) and Section 78 of the Finance Act, 1994..



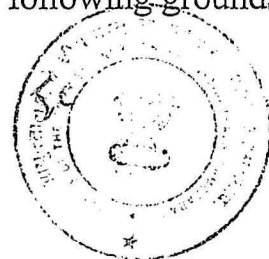
4. The SCN was adjudicated vide the impugned order wherein:
- Service Tax demand of Rs.14,30,716/- was confirmed for the period F.Y. 2016-17 under Section 73(1) of the Finance Act, 1994 alongwith interest under Section 75 of the Finance Act, 1994.
 - Penalty of Rs.1000/- was imposed under Section 77(1)(b) of the Finance Act, 1994.
 - Penalty of Rs.1000/- was imposed under Section 77(1)(c)(i) of the Finance Act, 1994.
 - Penalty of Rs.1000/- was imposed under Section 77(1)(c)(ii) of the Finance Act, 1994.
 - Penalty of Rs.10,000/- was imposed under Section 77(2) of the Finance Act, 1994.
 - Penalty of Rs.14,30,716/- was imposed under Section 78 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:
- At the outset, they object the impugned Order which imposes Service Tax of Rs. 14,30,716 in its entirety as being fallacious and incorrect and are based entirely on assumptions and presumptions and without appraising the facts and circumstances in the legal perspectives and adjudication being on the grounds which are arbitrary and legally not tenable and which are also contrary to the settled law position by various honorable Courts, honorable Advance Ruling Authority, and Intention of legislature.
 - The Adjudicating Authority has not furnished analysis done by CBDT to taxpayer to prepare defence for rebuttal of the said information, because your office is under duty to furnish the information relied by you for issuance of SCN as per clause 13 of the Master Circular which is binding on the field formation staff and also necessary to give an opportunity to rebut third party material relied in terms of doctrine of natural justice.



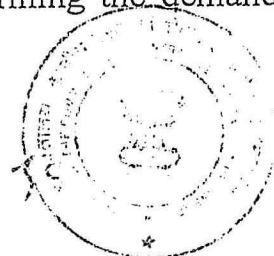
- Adjudicating Authority has tried to justify issuance of SCN on the ground of contraventions of provisions of Finance Act, 1994 and Service Tax Rule, 1994 on illusory grounds because your office has no cogent and tenable materials/information to take benefits of extended period of five years to issue SCN. In absence of cogent information, you are raising allegations on assumptions and presumptions which are not tenable under any law.
- SCN is barred by limitation. The said section lays down a time limit of 30 months from the relevant date. The relevant date is separately provided under section 73(6) as the date when the return was due to be filed.
- The appellant's 26AS for the referenced F.Y. 2016-17 clearly indicates that payments have been made/ credited to the assessee on account of appellant as payments for GTA service where the payer is supposed to make TDS as per Income Tax Laws and acted casually and arbitrarily to draw wrong inference that service provided to those recipient who deduct tax are body corporate and service of GTA provided to them is covered under RCM.
- Adjudicating Authority has raised demand violating the provisions of Notification No. 30/2012 read with Section 68(2) of the Finance Act, 1994 which introduced the reverse charge mechanism concept.
- Therefore, the order of the Adjudicating Authority/proper officer in confirming and imposing tax on the said supply is bad in law and contrary to the facts of the case. The Adjudicating Authority has thus erred in confirming and imposing an interest u/s 75 and a penalty u/s 77 and 78 of the Finance Act, 1994.
- The order of the Adjudicating Authority is bad in law, illegal, unjustified and against the principles of natural justice.

6. Personal Hearing in the case was held on 24.01.2024. Shri Piyush Somnath Patel, Chartered Accountant and Shri Rutvik Piyush Patel, Advocate, appeared for personal hearing on behalf of the appellant. They submitted additional written submission and reiterated its content and requested to allow their appeal.

6.1 Subsequently, the appellant submitted additional written submission during the course of hearing, wherein they inter alia submitted the following grounds :



- The appellant has been registered with Service Tax Department with STC No. DGOPS8704QSD001 and their services falls under the category of 'Transport of Goods by Road/Goods Transport Agency. Further, they that they already filed all the FORM ST -3 under section 70 of the Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994. Thus the appellant has sincerely complied with the provisions of the Finance Act, 1994.
- The Appellant provides transportation services for goods by road and acts as a Goods Transport Agency (GTA) by issuing Consignment Notes.
- For GTA services, the liability to pay service tax falls on the recipient of the service, as per Notification No. 30/2012-Service Tax.
- The Adjudicating Authority alleged that there was a discrepancy between the gross value of services declared in the Service Tax Return (ST-3) filed with the Service Tax Department and the gross value of services declared in the Income Tax Return/TDS Returns filed with the Income Tax Department, based on an analysis by the CBDT sent to the CBIC.
- Adjudicating Authority confirmed the service tax liability against the appellant for Goods Transport Agency (GTA) services without considering into the specifics between the appellant and their clients. Instead, the AA relied solely on documents such as income tax returns, Form 26AS, profit and loss account, and balance sheet.
- Typically, the tax liability for GTA services rests on the person who pays the freight, but this aspect was not adequately considered in the AA's decision.
- The Appellant argues that a Goods Transport Agency (GTA) issues consignment notes for the transportation of goods by road. They clarify that a consignment note signifies the transfer of the goods and the transporter's responsibility for safe delivery until reaching the consignee.
- The Adjudicating Authority did not demand consignment notes or other documents to verify the allegations before confirming the demand for service tax.



6.3 The Appellant have submitted the following documents in support of their rendered services and claim of exemption/abatement for Goods Transport Agency (GTA) during the period F.Y. 2016-17 :

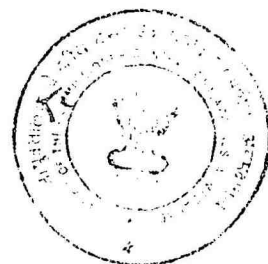
- Trading and Profit & Loss Account
- Balance Sheet
- Sales register
- Form 26AS
- ITR
- sample consignment notes

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.14,30,716/- confirmed under proviso to Section 73 (1) of Finance Act, 1994 along with 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.

8. Upon verification of the documents submitted by the appellant, I find that the Appellant are engaged in supplying two types of service, which are described as under:

- (i) Service as GTA service provider to Body Corporate;
- (ii) Service as GTA service provider to Non-body Corporate/individuals;

9. It is contended by the Appellant that the liability of Service Tax arising out of on the GTA service rendered to the Body corporate is to be borne by the service recipient under Reverse Charge Mechanism (RCM) in terms of Notification No. 30/2012-ST dated 20.06.2012. They also contended that the adjudicating authority allows in all those cases wherein service is provided to the body corporate only on the basis of the data received from 26AS. The adjudicating authority find that the appellant had provided service to the body-corporate amounting to Rs. 11,85,939/- and did not demand upon it. However, they did not consider the sales ledger submitted by the Appellant. The Appellant claimed that they have provided GTA service to those recipients also, of which data could not be found on the basis of only



the scrutiny of 26AS. Hence, I find it right to discuss the sales register furnished by the appellant. Upon verification of the sales register submitted by the appellant, I find that there are two category of services (1) service provided to body corporate (2) service provided to non-body corporate/individuals. I find that the appellant have provided service to individual and in those cases the appellant would be liable to pay service tax under forward charge method (FCM) and in second case where the appellant provided service to body corporate, the liability of Service Tax arising out is to be borne by the service recipient under Reverse Charge Mechanism (RCM) in terms of Notification No. 30/2012-ST dated 20.06.2012.

10. I find that in support of their claim that the Appellant provided services to Body corporate, they have furnished sales register & sample consignment notes. They have submitted consignment notes in respect of following consignee e.g. Crystal Ceramic India Pvt. Ltd., Swastik Ceramic Pvt. Ltd., Sriram Construction Pvt. Ltd., Shree Ambica Industries Pvt. Ltd. etc.

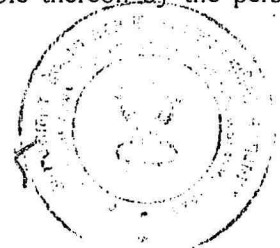
10.1 I find that "*Goods transport Agency*" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called; on reading the said definition of Goods Transport Agency and submissions made by the Appellant I find that the Appellant are providing service of Goods Transport Agency.

10.2 Further, I find that the recipient of service/payer of freight is liable to pay service tax in the light of Notification No. 30/2012-ST dated 20.06.2012. The extract of the of Notification 30/2012-ST dated 20.06.2012 is reproduced as under:

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 GTA service provided to body corporate by virtue of the above provision.

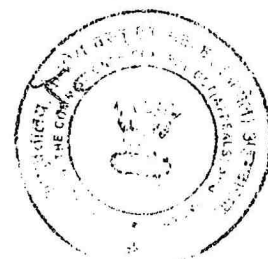
10.3 Reading the above provision, I find that the person who pays the freight or receives the service is liable to pay service tax in terms of Section 68 (2) of the Act. Section 68 is also reproduced as a ready reference as under:

SECTION 68. Payment of service tax. —

(1) *Every person providing taxable service to any person shall pay service tax at the rate specified in section [66B] in such manner and within such period as may be prescribed.*

(2) *Notwithstanding anything contained in sub-section (1), in respect of [such taxable services as may be notified by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section [66B] and all the provisions of this Chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service.*

11. Further in case of the service provided to non body-corporate, the Appellant are liable to pay service tax under forward charge method. As per the submission made by the Appellant, I find that they have provided service to individual or non-corporate body wherein the liability of discharging service tax goes on the Appellant.



Hence the Appellant are liable to pay service tax in all cases where the liability is under forward charge method. I find the appellant would be liable to pay service tax on taxable value of Rs. 14,61,908/-. I further find that the adjudicating authority had given the abatement benefit in terms of notification 26/2012-ST dated 20.06.2012, as amended. Accordingly, the appellant is eligible and liable to pay service tax on the GTA Services on abated value, therefore, the taxable portion of would be Rs.4,38,572/- in terms of notification 26/2012-ST dated 20.06.2012, as amended. On the taxable value of Rs.4,38,572/- the appellant is liable to pay service tax amounting to Rs.65,786/-. When the tax liability is there, the appellant is also liable to pay interest and penalty.

12. In view of the above discussions and findings, I pass the following order in appeal.

- (i) I uphold the Service Tax demand of Rs.65,786/- only under the provisions of Section 73(1) of the Finance Act,1994 along with interest at applicable rate on the confirmed demand of service tax under Section 75 of the Finance Act, 1994.
- (ii) I uphold the penalty of Rs.1,000/- on the appellant under the provisions of Section 77(1)(b) of the Finance Act, 1994.
- (iii) I uphold the penalty of Rs.1,000/- on the appellant under the provisions of Section 77(1)(c)(i) of the Finance Act, 1994.
- (iv) I uphold the penalty of Rs.1,000/- on the appellant under the provisions of Section 77(1)(c)(ii) of the Finance Act, 1994.
- (v) I uphold the penalty of Rs.10,000/- on the appellant under the provisions of Section 77(2) of the Finance Act, 1994.
- (vi) I uphold the penalty of Rs.65,786/- only on the appellant under the provisions of Section 78(1) of the Finance Act, 1994.

15. 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.



ज्ञानचंद जैन

आयुक्त (अपील्स)

Dated: 26 February, 2024



सत्यापित/Attested :


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

By REGD/SPEED POST A/D

To,
M/s Dev Transport Co.
(Prop. Gurdev Satbirsingh Sharma),
F/5, 2nd Floor, Priya Avenue,
Above HDFC Bank, GIDC Chhatral,
Kalol, Gandhinagar, Gujarat-382729.

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 – Kalol, Gandhinagar
Commissionerate.
4. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication of
OIA on website.
5. Guard file.
6. PA File.

