आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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सत्यमेव जयते

आज़ादी का अमृत महोत्सव

By SPEED POST
DIN:- 20230664SW000011111A

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/2416/2022-APPEAL 12162-21
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-034/2023-24 and 24.05.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	12.06.2023
(ङ)	Arising out of Order-In-Original No. 05/D/GNR/PMT/2022-23 dated 24.05.2022 passed by the Deputy Commissioner, CGST, Division-Gandhinagar, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Arvindbhai Girdharlal Thakkar, Plot No. 791/D/1, Panchshil Park, Sector-21, Gandhinagar – 382021

कोई व्यक्ति इस अपील-आदेश से असंतोश 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 पूवोक्त 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 मे 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 मामलें 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 डयूटी केडिट 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 दिनाँक 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 रूपये या उससे कम होतो रूपये 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 2ndfloor, 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. Registar 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 ओदश 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 हैं।

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 संषोधित 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 in 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 राशिय;
(3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा ' लंबित अपील' में पहले पूर्व जमा की तुलना मेंए 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 व्विादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

ORDER-IN-APPEAL

The present appeal has been filed by M/s. Arvindbhai Girdharlal Thakkar, Plot No. 791/D/1, Panchshil Park, Sector-21, Gandhinagar – 382021 (hereinafter referred to as "the appellant") against Order-in-Original No. 05/D/GNR/PMT/2022-23 dated 24.05.2022 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, Central GST, Division Gandhinagar, (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. ACTPT4293RST001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2015-16 and FY 2016-17, it was noticed that there is difference of value of service amounting to Rs. 84,52,683/- during the FY 2015-16 and Rs. 2,11,62,288/- during the FY 2016-17, between the gross value of service provided in the said data and the gross value of service shown in Service Tax Returns filed by the appellant for the FY 2015-16 and 2016-17. The appellant were called upon to submit clarification for difference, along with supporting documents, for the said period. The appellant has submitted the required details. On verification of the same, it appeared to the officers that the nature of activities carried out by the appellant is taxable.

2.1 Subsequently, the appellant were issued Show Cause Notice No. V/04-126/O&A/SCN/Arvindbhai/20-21 dated 10.09.2020 demanding Service Tax amounting to Rs. 43,99,982/- for the period FY 2015-16 and FY 2016-17, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 76, Section 77(2), Section 77(3)(c) and Section 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 42,35,840/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period FY 2015-16 and FY 2016-17. Further, (i) Penalty of Rs. 42,35,840/- was imposed on the appellant under Section 78 of the Finance Act, 1994; and (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994.

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

- The appellant were providing Transportation Service under the Trade Name "Nilkanth Roadlines" during the FY 2015-16 and FY 2016-17.

- As per the provisions of Notification No. 30/2012-ST dated 20.06.2012, if the service is provided to 06 categories of service recipients as prescribed under the said notification, then service tax is to be paid by the service recipient, therefore, they have not collected tax from below mentioned parties and bills were issued on the basis of Reverse Charge Mechanism.

Sr. No.	Name of Body Corporate / Firm / Society
1	Asahi Songwon Color India Ltd.
2	Cedar Dekor Pvt. Ltd.
3	Khushbhu Plywood Pvt. Ltd.
4	Suman Plywoods Pvt. Ltd.
5	Coincide Infrastructure
6	Evershine Decor Pvt. Ltd.
7	Gumpro Chem (Kalol)
8	Kadi Taluka Patel Samaj Bhuvan
9	Karnanagar Kelavani Mandal
10	Sarbhara Food & Beverages

- They have submitted copies of ledger for the said parties for the period under dispute.

- They have filed all their Service Tax Return for the said period and paid Service Tax accordingly.

- The adjudicating authority has, in the impugned order, allowed the RCM benefit only in respect of one party viz. Cedar Décor Pvt. Ltd., who has deducted TDS in FY 2015-16. However, it has not mentioned that according to which provision of service tax act, sale on basis of RCM considered only when TDS has deducted by the service recipient. Further, they submitted that as per provisions of Section 194C(6) of the Income Tax Act, 1961, in case of transporter owing not more than 10 goods carriage, there will be no TDS.

- They have filed all their Service Tax Return for the said period and paid applicable Service Tax. They have not paid service tax on transport service provided to 06 categories of service recipients as prescribed under Notification No. 30/2012-ST dated

20th June 2012 because as per the service tax law, they can not collect service tax on it due to RCM provisions.

3.1 The appellant in their additional submission dated 22.02.2023, inter alia reiterated submissions made in appeal memorandum.

4. Personal hearing in the case was held on 13.03.2023. Shri Ramesh Pujara, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He reiterated submissions made in appeal memorandum. He stated that he can produce invoices to substantiate their claim for Reverse Charge Mechanism.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of service tax against the appellant along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise. The demand pertains to the period FY 2015-16 and FY 2016-17.

6. I find that in the SCN in question, the demand has been raised for the period FY 2015-16 and FY 2016-17 based on the Income Tax Returns filed by the appellant. Except for the value of "Sales of Services under Sales / Gross Receipts from Services" provided by the Income Tax Department, no other cogent reason or justification is forthcoming from the SCN for raising the demand against the appellant. It is also not specified as to under which category of service the non-levy of service tax is alleged against the appellant. Merely because the appellant had reported receipts from services, the same cannot form the basis for arriving at the conclusion that the respondent was liable to pay service tax, which was not paid by them. In this regard, I find that CBIC had, vide Instruction dated 26.10.2021, directed that:

"It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.

3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner /Chief Commissioner (s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where

the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee."

6.1 In the present case, I find that letters were issued to the appellant seeking details and documents, which were submitted by the appellant. However, without any further inquiry or investigation, the SCN has been issued only on the basis of details received from the Income Tax department, without even specifying the category of service in respect of which service tax is sought to be levied and collected and without examining the applicability of Notification No. 26/2012-ST dated 20.06.2012, specifically when the appellant is registered with the Service Tax department under the category of "Transport of Goods by Road / Goods Transport Agency Service" and had filed their ST-3 Returns in the said category of service. This, in my considered view, is not a valid ground for raising of demand of service tax.

7. It is observed that the adjudicating authority has confirmed the demand of the service tax denying the benefit of RCM on the reason that the name of the service recipients are not reflected in Form 26AS. He has also not extended benefit of abatement as provided under Notification No. 26/2012-ST dated 20.06.2012, while calculating service tax payable.

8. It is observed that the main contentions of the appellant are that (i) as per the provisions of Notification No. 30/2012-ST dated 20.06.2012, if the service is provided to 06 categories of service recipients as prescribed under the said notification, then service tax is to be paid by the service recipient under reverse charge mechanisam. Therefore, they have not collected service tax from the parties as mentioned in the ledgers and bills were issued on the basis of Reverse Charge Mechanism; (ii) they have filed all their Service Tax Return for the said period and paid applicable Service Tax on the remaining service value; and (iii) the recipient of the service had not deducted TDS on the amount paid as per provisions of Section 194C(6) of the Income Tax Act, 1961.

9. On verification of the Profit & Loss Account for the FY 2015-16, it is observed that the appellant have shown an income of Rs. 1,65,10,449/- under the head of Freight Income (N) and an income of Rs. 78,74,242/- shown in the head of Freight Income (S.T.). Similarly, in the Profit & Loss Account for the FY 2016-17, it is observed that the appellant have shown an income of Rs. 2,12,10,723/- in the head of Freight Income (N) and an income of Rs. 16,35,886/- shown in the head of Freight Income (S.T.)

9.1 On verification of the ST-3 Returns for the FY 2015-16 and FY 2016-17 submitted by the appellant, it is observed that the appellant have paid Service Tax on the Gross Taxable Value amounting to Rs. 78,74,244/- during the FY 2015-16 and Rs. 16,84,321/- during the FY 2016-17. The details of the ST-3 filed are as under:

(Amount in Rs.)

Period	Gross Amount shown in ST-3	Gross Taxable Value shown in ST-3 on which S.Tax paid
Apr-Jun-15	1,06,44,416/-*	25,86,652/-
Jul-Sept-15	0/-	0/-
Oct-Dec-15	4,13,461/-	4,13,461/-
Jan-Mar-16	48,74,131/-	48,74,131/-
Total FY 2015-16	**1,59,32,008/-**	**78,74,244/-**
Apr-Jun-16	12,29,271/-	12,29,271/-
Jul-Sept-16	0/-	0
Oct-Dec-16	89,464/-	89,464/-
Jan-Mar-17	3,65,586/-	3,65,586/-
Total FY 2016-17	**16,84,321/-**	**16,84,321/-**

* – The amount include Rs. 80,57,765/- shown as 100% S.Tax paid by the service recipient under Reverse Charge Mechanism.

10. I find that the adjudicating authority has passed the impugned order denying the benefit of RCM on the reason that the name of the service recipient is not reflected in Form 26AS. The adjudicating authority has also not considered benefit of abatement as provided under Notification No. 26/2012-ST dated 20.06.2012, while calculating service tax payable. The adjudicating authority has also observed that the appellant has not submitted any consignment note, transaction details, ledger of recipients, invoices etc. to establish that the appellant has provided GTA services. The adjudicating authority has also observed that the appellant only submitted unsigned ledger of freight income. The adjudicating authority has, while confirming the demand of service tax, in the impugned order held as under:

> *"22.3 The above figures as reflected in Show Cause Notice was found extracted from ITR for the FY 2015-16 and FY 2016-17. Service tax assessee while defending their case has submitted the Reconciliation statement of FY 2015-16 and FY 2016-17 between turnover shown in Service Tax against turnover shown in Income Tax Return. Herein, they stated that difference of Rs. 84,52,683/- in financial year 2015-16 is arose due to the turnover on which 100% service tax paid by recipient that is not shown in Service Tax return. Similarly, difference of Rs. 2,11,62,288/- in financial year 2016-17 is arose due to the turnover on which 100% service tax paid by recipient that is not shown in Service Tax return.*
>
> *22. Further, on perusal of documents, the service tax assessee has not submitted proper documents in support to their RCM claims. They only submitted unsigned ledger of freight income and 26AS for the F.Y. 2015-16 & 2016-17. None of the recipients shown in Freight ledger for FY 2016-17 are found in 26AS. Similarly, for F.Y. 2015-16 only one recipient viz. M/s. Cedar Décor Pvt. Ltd. as shown in freight ledger is found in 26AS. Service tax assessee has not submitted any documents like transaction details,*

Ledger of recipients, Invoices etc. to established that he has provided GTA services to the entities claimed in unsigned copy of Freight Ledger. Service tax assessee has not provided such documents viz. Consignment Note which is integral and mandatory requirement, to established that GTA Service has been given under RCM or transaction has been made in service receiver and service provider.

22.5 Further, as per Section 65B(26) of the Finance Act, 1994; "Goods Transport Agency means any person who provides service in relation to transport of goods by road and issues consignment notes, by whatever name called." Therefore, issue of Consignment Note (C/N) is integral and mandatory requirement before any road transport can be said to be GTA.

22.6 More over as Rule 4B of Service Tax Rules, 1994 – Issue of consignment note. – Any goods transport agency which provides service in relation to transport of goods by road in a goods carriage shall issue a consignment note to the recipient of service: Provided that where any taxable service in relation to transport of goods by road in a goods carriage is wholly exempted under Section 93 of the Act, the goods transport agency shall not be required to issue the consignment note [to the recipient of service]. Explanation – For the purposes of this rule an the second proviso to rule 4A, "consignment note" means a document, issued by a goods transport agency against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains the name of the consignor and consignee, registration number of the goods carriage in which the goods are transported, details of the goods transported, details of the place of origin and destination, person liable for paying service tax whether consignor, consignee or the goods transport agency.

22.7 In view of the above, Rule 4B ibid mandates issue of consignment note (C/N) by any goods transport agency which provides service in relation to transport of goods by road in a goods carriage to the recipient of service.

23. Further, in regard of their claim of RCM, on perusal of Form 26AS submitted by the service tax assessee, it is observed that the service tax assessee has received / credit amount from the below named entities as per 26AS during F.Y. 2015-16 and 2016-17.

....

23.1 Therefore, on perusal of 26AS as mentioned hereinabove, it is noticed that only one transaction of Rs. 1132,013/- in respect of M/s. Ceder Décor Pvt. Ltd. has been

established with ledger as submitted by the service tax assessee for the FY 2015-16. Further, Service tax liability on income of Rs. 11,32,013/- earned from M/s. Ceder Décor Pvt. Ltd. is covered under Notification 30/2012, the recipient being body corporate. Therefore, Rs. 11,32,013/- has been deducted from differential value on which service tax demanded for F.Y. 2015-16. Further, in respect of F.Y. 2016-17, on perusal of 26AS for F.Y. 2016-17 as mentioned herein above, it is noticed that no entry from freight Ledger is appearing in 26AS."

11. For ease of reference, I reproduce the relevant provision for abatement as provided under Notification No. 26/2012-ST dated 20.06.2012 as amended and relevant provision for reverse charge mechanism as provided under Notification No. 30/2012-ST dated 20.06.2012 as amended, which reads as under:

"Notification No. 26/2012- Service Tax dated the 20th June, 2012

G.S.R..... (E). - In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act), and in supersession of notification number 13/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 211 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service of the description specified in column (2) of the Table below, from so much of the service tax leviable thereon under section 66B of the said Act, as is in excess of the service tax calculated on a value which is equivalent to a percentage specified in the corresponding entry in column (3) of the said Table, of the amount charged by such service provider for providing the said taxable service, unless specified otherwise, subject to the relevant conditions specified in the corresponding entry in column (4) of the said Table, namely;-

Sl. No.	*Description of taxable service*	*Percentage*	*Conditions*
(1)	*(2)*	*(3)*	*(4)*
For the period from 01.07.2012 to 31.03.2015			
7.	*Services of goods transport agency in relation to transportation of goods.*	*25*	*CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004*
For the period from 01.04.2015 to 29.02.2016 as amended by Notification No. 8/2015-ST dated 01.03.2015			
7.	*Services of goods transport agency in relation to*	*30*	*CENVAT credit on inputs, capital goods and input services, used for*

	transportation of goods.		*providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004*
With effect from 01.03.2016 as amended by Notification No. 08/2016-ST dated 01.03.2016			
7.	*Services of goods transport agency in relation to transportation of goods other than used household goods.*	*30*	*CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken by the service provider under the provisions of the CENVAT Credit Rules, 2004*

*"**Notification 30/2012 Service Tax dated 20.6.2012** 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 17th 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 17th 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 31st 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 31st 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;"

11.1 Based on the legal provision above, I find that as per the provisions of Notification No. 30/2012-ST dated 20.06.2012, if the service recipient falls under any of the specified 06 categories of service recipients as prescribed under Notification No. 30/2012-ST dated 20th June 2012, then the service recipients were liable to pay the Service Tax under Reverse Charge Mechanism. However, I find that the adjudicating authority has considered the service provided by the appellant under RCM only in cases when TDS has deducted by the service recipient. The adjudicating authority has also not given any reasoning or not mentioned any provision under the Finance Act, 1994, or rules under which such requirement is necessary. In fact, there is no requirement of deducting TDS in case of transporter owing not more than 10 goods carriage, as provided under Section 194C(6) of the Income Tax Act, 1961. I also find that the adjudicating authority has not given any finding on the status of the service recipient mentioned in the income ledger provided by the appellant that whether the said service recipient falls under the specified categories of service recipients or otherwise. Thus, I find that the impugned order passed by the adjudicating authority is not a speaking order.

11.2 I also find that the adjudicating authority has not examined the provisions of abatement as per Notification No. 26/2012-ST dated 20.06.2012, while calculating service tax payable. I also find that the adjudicating authority has observed that the appellant failed to provide documentary evidence to establish that GTA Service has been provided by them. In fact, the appellant is registered with Service Tax department in the category of Goods Transport Agency and filing Service Tax Returns ST-3 under the said category and paying service tax. In absence of the any contrary evidence, the finding of the adjudicating authority is not legally sustainable.

11.3 In view of the above discussion, I find that the adjudicating authority has confirmed the demand of service tax, without considering the legal provisions and verification of the documents. If the documents were not submitted by the appellant, the adjudicating authority was required to call for the further documents from the appellant, which was not done by the adjudicating authority. As mentioned in para supra, the CBIC had, vide Instruction dated 26.10.2021, specifically directed that the adjudicating authorities are expected to pass a judicious order after proper appreciation of facts. The relevant portion of the same is as under:

"Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee."

12. Considering the facts of the case as discussed hereinabove and in the interest of justice, I am of the considered view that the case is required to be remanded back to the adjudicating authority to examine the case on merits and after proper examining the records of the appellant. The appellant is directed to submit all the records and documents in support of their claim for exemption from the service tax before the adjudicating authority within 15 days of the receipt of this order. The adjudicating authority shall after considering the records and documents submitted by the appellant decide the case afresh by following the principles of natural justice.

13. In view of the above discussion, I remand the matter back to the adjudicating authority to reconsider the issue a fresh and pass a speaking order after following the principles of natural justice.

14. 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.

(Akhilesh Kumar)
Commissioner (Appeals)

24th May, 2023.

Attested

(R. C. Maniyar)
Superintendent(Appeals),
CGST, Ahmedabad

Date : 24.05.2023

By RPAD / SPEED POST

To,

M/s. Arvindbhai Girdharlal Thakkar,
Plot No. 791/D/1, Panchshil Park,
Sector-21, Gandhinagar – 382021

Appellant

The Deputy Commissioner,
CGST, Division Gandhinagar,

Respondent

Copy to :

1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
2) The Commissioner, CGST, Gandhinagar

3) The Deputy Commissioner, CGST, Division Gandhinagar
4) The Assistant Commissioner (HQ System), CGST, Gandhinagar

(for uploading the OIA)

5) Guard File
6) PA file