



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:- 20230764SW00007277FA

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/2906/2022-APPEAL / 31/11/22 - 28
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-053/2023-24 and 30.06.2023
(ग)	पारित किया गया / Passed By	श्री शिव प्रताप सिंह, आयुक्त (अपील) Shri Shiv Pratap Singh, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	14.07.2023
(ङ)	Arising out of Order-In-Original No. KLL DIV/ST/PARAS MANI TRIPATHI/131/2021-22 dated 15.06.2022 passed by Deputy Commissioner, CGST, Division-Kalol, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Kushal Cargo Movers (PAN-BIKPK5294F), 30, Parmeshwar Park, Borisana Road, Kalol HO, Gandhinagar, Gujarat-382721

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:-

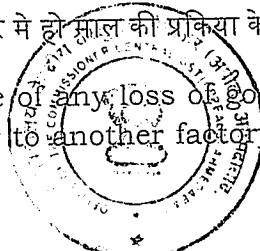
**Revision application to Government of India:**

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में 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, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course



of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं 2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या एए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-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 हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम 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.

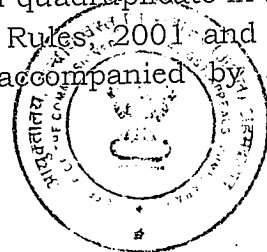
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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 और संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) 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।

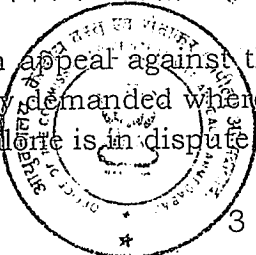
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

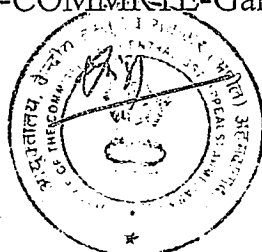
This Order arises out of an appeal filed by M/s. Kushal Cargo Movers, 30, Parmeshwar Park, Borisana Road, Kalol, Dist. Gandhinagar - 382721 [hereinafter referred to as "the appellant"] against Order-in-Original No. KLL DIV/ST/PARAS MANI TRIPATHI/131/2021-22 dated 15.06.2022 [hereinafter referred to as "the impugned order"] passed by the Deputy Commissioner, CGST & Central Excise, Division: Kalol, Gandhinagar Commissionerate [hereinafter referred to as "the adjudicating authority"].

2. Briefly stated, facts of the case are that the appellant was registered with Service Tax under Registration No. BIKPK5294FST001 for providing taxable services. Upon analysis of the gross value of 'sale of services' declared in the Income Tax Returns/TDS Returns and Service Tax Returns (ST-3) for the F.Y. 2015-16 and F.Y. 2016-17, it was found by the jurisdictional officers that the appellants have declared less value in their Service Tax Returns. In order to verify the same and explain these discrepancies, letters/emails dated 13.06.2020, 06.07.2020, 06.07.2020 and 13.07.2020 were issued to the appellants, requesting them to explain the reasons for such discrepancies and submit copies of Balance Sheet, Profit & Loss Account, Income Tax Returns, Form-26AS, Service Tax ledger for the F.Y.2014-15. The appellant did not respond.

2.1 It appeared to the department that nature of activities undertaken by the appellant were covered under the definition of service under the Finance Act, 1994 and the service tax payable was determined on the basis of Differential value of sale of service mentioned in Income Tax data with those declared in ST-3 Returns as per details below:

(Amount in Rs.)				
Financial Year (F.Y.)	Value of Services declared in ITR	Value of Services provided as per ST-3 returns	Highest Difference	Total Service Tax
1	2	3	4	5
2015-16	1,40,48,469/-	2,55,952/-	1,37,92,517/-	19,99,915/-
2016-17	1,13,57,914/-	0/-	1,13,57,914/-	17,03,687/-
Total	2,54,06,383/-	2,55,952/-	2,51,50,431/-	37,03,602/-

2.2 The appellant were issued a Show Cause Notice No. GEXCOM/SCN/ST/920/2020-CGST-DIV-KLL-COMMRTE-Gandhinagar dated



07.10.2020 demanding Service Tax amounting to Rs. 37,03,602/- under proviso to Section 73 (1) of Finance Act, 1994 read with Section 68 of the Finance Act, 1994, by invoking extended period of limitation along with interest under Section 75 of the Act. The SCN also proposed imposition of penalty under Section 78 of the Finance Act, 1994.

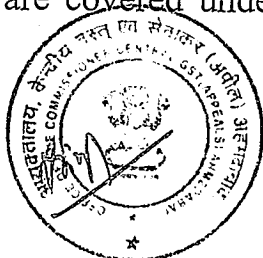
3. The SCN was adjudicated vide the impugned order wherein a demand of Service Tax amounting to Rs. 1,32,829/- was confirmed under proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75. Penalty of Rs. 1,32,830/- was imposed under Section 78 of the Finance Act, 1994.

4. Being aggrieved by the impugned order, the appellant have preferred this appeal along with an application for condonation of delay on following grounds:

(i) They were engaged in the business of transportation of goods by road and were providing GTA services (Goods Transport Agency) and are a Proprietorship firm. The adjudicating authority has not considered the factual aspect of the matter and confirmed the demand. As per Notification No. 30/2012-ST dated 20.06.2012, Service Tax is payable by the person who makes payment of the freight charges. In the instant case, the payments of freight charges were either paid by the service recipient or other GTA. Therefore, services provided by the appellant stands covered under Reverse Charge Mechanism and the liability of service tax are not on them.

(ii) Regarding the payments received from other Goods Transport Agency (GTA), the appellants contended that in terms of Sr. No. 22 (b) of Notification No. 25/2012-ST dated 20.06.2012, 'Services by way of giving on hire to a goods transport agency, a means of transportation of goods' are exempted. Hence, payments received by the appellant from other GTA for providing services are exempted from service tax.

(iii) Accordingly, the amounts of Rs. 14,17,397/- for the F.Y. 2015-16 and an amount of Rs. 15,81,630/- for the F.Y. 2016-17, which were considered as taxable value by the adjudicating authority for confirming the demand in the impugned order, are exempt from Service Tax as they are Proprietorship firms and are covered under Sr. No. 22 (b) of Notification No. 25/2012-ST dated



20.06.2012. They also submitted supporting documents in support of the above claim of exemption.

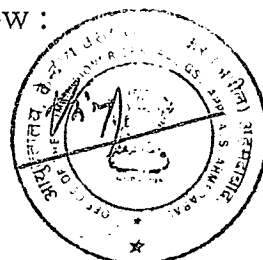
(iv) Regarding the imposition of penalty, they contended that as there is no liability of service tax on the appellant therefore, penalty is not imposable. They relied on the Judgement of the Hon'ble Supreme Court in case of Hindustan Steel Vs State of Orissa – 1978 (2) ELT (J 159) (S.C.).

5. Personal Hearing in the case was held on 13.03.2023. Mr. Arpan K. Yagnik, Chartered Accountant, appeared for personal hearing on behalf of the appellant. He re-iterated submissions made in the application for condonation of delay. He also re-iterated the submissions made in the appeal memorandum. Further, he submitted copies of status of the parties, in respect of which demand has been confirmed. He also stated that RCM is applicable for these parties as well.

5.1 On account of change in the Appellate authority, personal hearing was again granted on 23.06.2023. Mr. Arpan K. Yagnik, Chartered Accountant, appeared for personal hearing on behalf of the appellant. He re-iterated submissions made in the appeal memorandum and additional submissions made at the time of personal hearing earlier. He, further submitted that the appellant provided GTA services and provided trucks on hire to another GTA. The lower authority has dropped major portion of the demand in the show cause notice, but confirmed a minor portion on the ground that the service recipient was a proprietor concern to whom RCM is not applicable. The appellant also submitted that the income received from these proprietor concerns were in fact towards trucks provided on hire to them. The same is exempt from Service Tax vide serial no. 22(b) of the Notification No. 25/2012-ST. Therefore, he requested to set aside the impugned order.

6. It is observed from the records that the present appeal was filed by the appellant on 23.11.2022 against the impugned order dated 15.06.2022, which was admittedly received by the appellant on 22.09.2022.

6.1 It is also observed that the Appeals preferred before the Commissioner (Appeals) are governed by the provisions of Section 85 of the Finance Act, 1994. The relevant part of the said section is reproduced below :



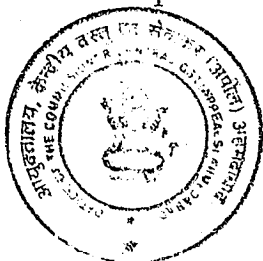
*“(3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 received the assent of the President, relating to service tax, interest or penalty under this Chapter:*

*Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.”*

6.2 As per the legal provisions above, the period of two months for filing appeal before the Commissioner (Appeals) for the instant appeal ends on 22.11.2022 and further period of one month, within which the Commissioner (Appeals) is empowered to condone the delay upon being satisfied with the sufficient reasons shown by the appellant, ends on 21.12.2022 . This appeal was filed on 23.11.2022, i.e after a delay of 01 day from the last date of filing appeal, and is within the period of one month that can be condoned.

6.3 In their application for condonation of delay, the appellant have submitted that due to administrative changes, there was a delay in obtaining documents for previous years and therefore the delay occurred in filing the appeal. The reasons were also explained by them during the course of personal hearing, which appeared to be cogent and convincing. Considering the submissions and explanations made during personal hearing, the delay in filing appeal is condoned in terms of proviso to Section 85 (3A) of the Finance Act, 1994.

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 and the impugned order passed by the adjudicating authority. The issue before me for decision is whether the impugned order passed by the adjudicating authority, in the facts and circumstances of the case, confirming the demand of service tax amounting to Rs. 1,32,829/- under proviso to Section 73 (1) of Finance Act, 1994 by invoking extended period of limitation alongwith interest, and imposing penalties under Section 77 and Section 78 of the Finance Act,1994, is legal and proper or otherwise. The demand pertains to the period F.Y. 2015-16 and F.Y. 2016-17.



8. It is observed that the SCN in question was issued based on the data received from the Income Tax department. Eventhough the appellant was registered under service tax, no verification regarding nature of service provided by the appellant was done and the tax liability was determined in the SCN merely on Income Tax data without any further verification. Hence, the show cause notice issued to the appellant is vague and mechanically construed. In this regard, it would be relevant to refer to the CBIC Instructions dated 21.10.2021, which reads as:

*Government of India  
Ministry of Finance  
Department of Revenue  
(Central Board of Indirect Taxes & Customs)  
CX & ST Wing Room No.263E,  
North Block, New Delhi,*

*Dated- 21<sup>st</sup> October, 2021*

*To,  
All the Pr. Chief Commissioners/Chief Commissioners of CGST & CX Zone, Pr.  
Director General DGGI*

*Subject:-Indiscreet Show-Cause Notices (SCNs) issued by Service Tax  
Authorities reg. Madam/ Sir,*

...

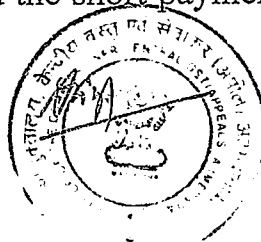
*2. In this regard, the undersigned is directed to inform that CBIC vide instructions dated 01.04.2021 and 23.04.2021 issued vide F.No.137/472020-ST, has directed the field formations that while analysing ITR-TDS data received from Income Tax, a reconciliation statement has to be sought from the taxpayer for the difference and whether the service income earned by them for the corresponding period is attributable to any of the negative list services specified in Section 66D of the Finance Act, 1994 or exempt from payment of Service Tax, due to any reason. 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.*

...

It is observed from the above Instruction that the SCN in this case was issued indiscriminately without any verification of the facts.

9. It is observed that the appellant were registered with the service tax department under Registration No. BIKPK5294FST001. The SCN in this case was issued on the basis of difference in figures reflected in the Income Tax Returns (ITR-5) and ST-3 Returns (ST-3) filed by the appellant during the period F.Y. 2015-16 and F.Y. 2016-17. The difference of declared value of services and the short payment of service tax worked out is as per the table below :





(all amount in Rs.)

Financial Year (F.Y.)	Value of Services / TDS declared in their ITR-5	Value of Services declared in their ST-3	Difference in value of services declared (col-2-3)	Service Tax
2015-16	1,40,48,469/-	2,55,952/-	1,37,92,517/-	19,99,915/-
2016-17	1,13,57,914/-	0/-	1,13,57,914/-	17,03,687/-
Total			2,51,50,431/-	37,03,602/-

9.1 It is observed that the adjudicating authority have considered the contentions of the appellant and upon co-relating them with the legal provisions have allowed the benefit of RCM in terms of Notification No.30/2012-ST dtd.20.06.2012 in case of 'Goods Transport Services' provided to the parties mentioned at Table-A at para-03.03 of the impugned order. Accordingly a demand of Rs. 35,70,773/- was dropped. I further find that, the adjudicating authority has denied exemption in all those cases where the service recipient are 'Proprietorship Firm' or 'HUF'. It is observed that the adjudicating authority has recorded at Para 03.03 of the impugned order, vide Table-B the list of those recipients against whom the exemption was denied. Further, I find that the names 'Rohini' and 'Noida WBO' is appearing in both the lists. In other words the adjudicating authority have extended the benefit of RCM in case of GTA services provided to M/s Rohini and M/s Noida WBO as detailed in Table-A, whereas he has denied the GTA services provided to these firms/companies as per Table-B. Therefore, the impugned order is inconsistent and legally unsustainable.

10. The appellants have further contended that they had submitted a detailed reply before the adjudicating authority regarding the services provided by them. However, the services provided by them to other GTA service providers were considered taxable by the adjudicating authority and the demand was confirmed vide the impugned order. Referring to Rule 2(1)(d)(B) of the Service Tax Rules, 1994 they have contended that they are not liable to pay service tax even in those cases where their services have been hired by other GTA service providers. It is relevant to refer to the provisions of Rule 2(1)(d)(B) of the Service Tax Rules, 1994, reproduced below:

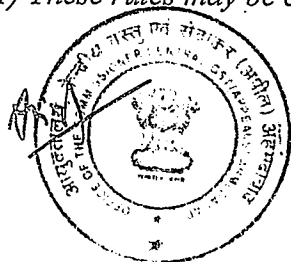
**SERVICE TAX RULES, 1994**

*(Incorporating changes made till issuance of notification no 6/2017-Service Tax dated 30-1-2017)*

*In exercise of the powers conferred by sub-section (1) read with sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules for the purpose of the assessment and collection of service tax, namely :-*

**1. Short title and commencement**

*(1) These rules may be called the Service Tax Rules, 1994.*



(2) They shall come into force on the 1-4- 1994.

## 2. Definitions

(1) In these rules, unless the context otherwise requires, -

(d) "person liable for paying service tax", -

(B) in relation to service 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,-

(I) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(II) 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;

(III) any co-operative society established by or under any law;

(IV) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;

(V) any body corporate established, by or under any law; or

(VI) any partnership firm whether registered or not under any law including association of persons;

any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage:

Provided that when such person is located in a non-taxable territory, the provider of such service shall be liable to pay service tax.

10.1 In terms of the above legal provisions it is explained that "any person who pays or is liable to pay freight either himself...", these explanations clarifies that even in case of a person receiving these services would be liable to pay service tax if he/she is paying the freight charges and is in a taxable territory. Therefore, the understanding of the adjudicating authority that 'Proprietorship Firms' are not eligible for exemption under RCM becomes invalid. Accordingly, the impugned order issued by the adjudicating authority is legally not tenable.

10.2 Further, the adjudicating authority has confirmed the demand only on grounds that some of the service recipients do not fall under the category of firms/companies eligible for benefit of RCM. It is also observed that the appellant have produced some documents explaining the status of their service receivers alongwith this appeal memorandum. I also find that, these documents were not produced before the adjudicating authority and are being produced before this authority for the first time. As these documents require thorough examination and co-relation with the nature of services received by them as well as payments of freight made by them. Therefore, it would be in the fitness of things that the matter be remanded to the adjudicating authority for fresh adjudication of the case after verification of documents produced by the appellant and co-relating them with the legal provisions.



11. The appellant during the course of personal hearing have claimed, that the services provided by them by way of hiring of Trucks (for transportation of goods) to other GTA operators were exempted from Service Tax in terms of Sl. No. 22(b) of the Notification No. 25/02012-ST dated 20.06.2012. In order to have a clear understanding of the exemption claimed by the appellant, the relevant portion of the notification is reproduced below :

*Government of India  
Ministry of Finance  
(Department of Revenue)*

**Notification No. 25/2012-Service Tax**  
New Delhi, the 20<sup>th</sup> 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 12/2012- Service Tax, dated the 17<sup>th</sup> March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17<sup>th</sup> March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services leviable thereon under section 66B of the said Act, namely:-*

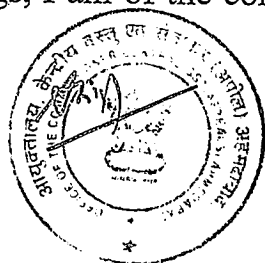
*1. Services provided to the United Nations or a specified international organization;*

*...  
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;*

11.1 Upon examining the above legal provisions it is apparent that services, by means of transportation of goods when provided to other GTA operators, stand exempted from the levy of service tax. Further, co-relating these provisions with the facts and circumstances of the case I find that, the appellants have not claimed the exemption under Sl. No. 22(b) of the Notification No. 25/02012-ST dated 20.06.2012 during the course of adjudication. It is also observed that, the documents provided by them do not categorically confirm the fact that the service recipients, i.e list of service recipients mentioned at Table-B of Para 03.03 of the impugned order, fall under the category of GTA service providers. As the matter involves submission of new documents by the appellant and verification of these documents, therefore, in the fitness of things, I am of the considered opinion that the matter be remanded back to



the adjudicating authority for adjudication afresh, in respect of the demand amounting to Rs. 1,32,829/- confirmed vide impugned order.

12. In view of the discussions made in the foregoing, the impugned order is set aside and the matter is remanded to the adjudicating authority for the limited purpose of fresh adjudication in respect of the demand amounting to Rs. 1,32,829/- (confirmed vide the impugned order) after examination of the documents produced by the appellant and after following the principles of natural justice. The appellants are directed to produce all documents in support of their claim for exemption before the adjudicating authority within 15 days of receipt of this order.

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.

( Shiv Pratap Singh )  
Commissioner (Appeals)

Dated: 30<sup>th</sup> June, 2023

साक्ष्यंकित/Attested:

(Somnath Chaudhary)  
Superintendent (Appeals),  
CGST, Ahmedabad.



**By REGD/SPEED POST A/D**

To,  
M/s. Kushal Cargo Movers,  
30, Parmeshwar Park,  
Borisana Road, Kalol,  
Dist. Gandhinagar - 382721

Copy to :

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