



सत्यमेव जयते

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

**By SPEED POST**

DIN:- 20230864SW0000555FB6

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/2669/2022-APPEAL / 411 69 - 23
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-067/2023-24 and 31.07.2023
(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	16.08.2023
(ङ)	Arising out of Order-In-Original No. 65/AC/DEM/MEH/ST/Dilipkumar N. Jani, Mehsana/2022-23 dated 17.06.2022 passed by The Assistant Commissioner, CGST, Division-Mehsana, Gandhinagar Commissionerate.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Dilipkumar N. Jani, 74, Umiya Shopping Centre, Mehsana Highway, Mehsana, Gujarat-384002.

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो सकता है।

Any person aggrieved by this Order-in-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way.

भारत सरकार का पुनरीक्षण आवेदन:-

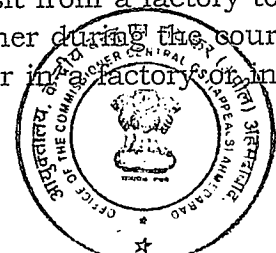
**Revision application to Government of India:**

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 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 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.

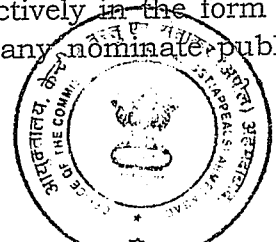
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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 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।

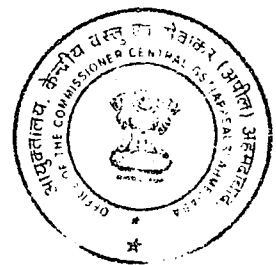
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

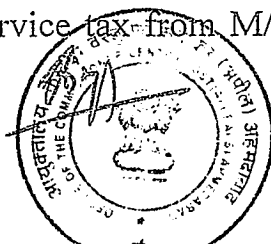


अपीलिय आदेश / ORDER-IN-APPEAL

This Order arises out of an appeal filed by M/s Dilipkumar N. Jani, 74, Umiya Shopping Centre, Mehsana Highway, Mehsana - 384002 [hereinafter referred to as the appellant] against OIO No. 65/AC/DEM/MEH/ST/Dilip Kumar N.Jani,Mehsana/2022-23 dated 17.06.2022 [hereinafter referred to as the impugned order] passed by Assistant Commissioner, Central GST, Division: Mehsana, Commissionerate: 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. AAWPJ8164GST001 and were engaged in providing services related to 'Rent-a-cabservice', 'Manpower recruitment and supply Service' and 'Supply of tangible goods service'. EA-2000 audit of the records of the appellant for the period October-2014 to June-2017 was conducted by the Officers of Central Tax (Audit) Commissionerate, Ahmedabad. During the course of Audit, the following objections were detected :

- (a). It was observed by the officers of audit that the appellants have neither maintained proper books of accounts nor filed their ST-3 Returns regularly. Many challans were also not shown in any ST-3 return. At the same time there was one instance where a Challan amounting to Rs. 70,040/- was shown in 2 returns. In some cases the amount of challan was entered wrongly in the returns. They also observed that the appellants were habitual in delaying the payment of service tax.
- (b) The appellants were Proprietorship firm, therefore their liability to pay service tax was on quarterly basis. Due to delayed payments made by them interest amounting to Rs. 47,097/- was detected.
- (c) During the scrutiny of records it was observed that the appellants were mainly engaged in providing Rent-a-cab service, 'Manpower recruitment and supply service' and 'Supply of tangible goods service'. During the period of audit They had provided services to various assets of M/s ONGC, Assam petroleum limited and Vishal enterprise. Due to non maintenance of proper record the details of income received by them were taken as per the Form 26AS. It was also detected that they were collecting service tax from M/s ONGC. They

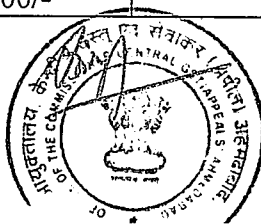


were also providing supply of tangible goods service for which they were liable to service tax. Since the appellant did not provide proper documents therefore their claim of abatement under Notification No. 26/2012-ST dated 20.06.2012 could not be ascertained appropriately. The net taxable value was calculated by the best judgment method as per the provisions of Section 72 of the Finance Act, 1994. The service tax liability of the appellant was finalised as per table below :

Particulars	F.Y. 2014-15 (in Rs.)	F.Y. 2015-16 (in Rs.)	F.Y. 2016-17 (in Rs.)
Gross Taxable Value	1,39,61,012/-	1,78,50,076/-	2,32,03,781/-
Abatement	00	00	00
Net Taxable Value	1,39,61,012/-	1,78,50,076/-	2,32,03,781/-
Service Tax Payable	17,25,581/-	25,39,513/-	34,80,259/-
Service Tax paid by the Appellant as per Challans produced	2,33,882/-	12,97,215/-	21,60,479/-
Net Service Tax Payable	14,91,699/-	12,42,298/-	13,19,780/-
Grand Total	40,53,777/-		

2.1 All the above observations were summarized as per Final Audit Report (FAR) No. 1685 / 2019-20 Dated. 19. 06.2020 issued by the. Joint Commissioner audit. As per the said Audit. Report following observations were finalised and conveyed to the appellant :

Sr. No	Gist of Objection	Revenue Implication (in Rs.)	Assessee in agreement Yes/No	Department's decision
1	Penalty for non-maintenance of proper Books of Accounts	Penalty Rs.10,000/-	Agreed & Paid	Para Settled
2	Penalty for non-filing of ST-3 Returns	Penalty Rs.20,000/-	Agreed & paid	Para Settled
3	Non-payment of interest on delayed payment of Service Tax	Interest Rs.47,097/-	Not agreed and not paid	Para Unsettled, SCN to be issued.
4	Short payment of Service Tax on reconciliation	Service Tax : Rs.40,53,777/- Interest - TBA Penalty - TBA	Not agreed and not paid	Para Unsettled, SCN to be issued.
	Total Detection	Rs.41,30,874/-		
	Total Recovery	Rs. 30,000/-		



3. On the basis of the above FAR, a Show Cause Notice No. 03/2020-21 was issued from F.No. VI/1(b)-27/Dilip K. Jani/IA/18-19/AP-57 dated 23.06.2020 (in short SCN) wherein it was proposed to :

- Demand and recover Service Tax amounting to Rs. 40,53,777/- under the proviso to Section 73(1) of the Finance Act, 1994 alongwith interest under Section 75 of the act.
- Demand and recover Interest amounting to Rs. 47,097/- under the provisions of Section 75 of the Finance Act, 1994.
- Penalty was proposed under Section 78 (1) of the Finance Act, 1994.

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

- The demand of interest was confirmed amounting to Rs. 47,097/-.
- Demand of service tax amounting to Rs. 14,98,889/- was confirmed under Section 73(2) of the Finance Act, 1994. Service Tax amount to Rs. 47,052/- voluntarily paid by the appellant was adjusted against the said demand and the nett demand was calculated as Rs. 14,51,837/- alongwith interest.
- Penalty amounting to Rs. 14,98,889/- was imposed under Section 78 of the Finance Act, 1994 alongwith option for reduced penalty in terms of proviso to clause (ii).
- Demand of Service Tax amounting to Rs. 25,54,888/- was dropped under Section 73(2) of the Service Tax, 1994.

4. Aggrieved with the impugned order, the appellant have filed the instant appeal, on following grounds:

(i) The were a Proprietorship firm carrying out business in relation to rent a cab etc. Audit was conducted under EA 2000 by department audit. Record for the period Oct 14 to June 17 was verified by audit party. Due to non submission of certain information audit party has raised certain para and main issue regarding claim of abatement and RCM. During course of adjudication, appellant has submitted relevant document and also appeared in person. The learned adjudicating officer has passed present order by reducing demand and confirmed the certain amount of tax.

(ii) The main issue to be decided at the time of adjudication of Show cause notice was, eligibility of abatement and reverse charge mechanism. The adjudicating authority has not considered the submission made by appellant and



not allowed abatement for the eligible contract. Further the challan paid by appellant which was very well verified by the audit party during course of audit and even allowed in show cause notice was also not considered. Now, the issues required to be addressed are (A) Claim of abatement and (B) Challan which was not allowed in OIO after being considered in show cause notice.

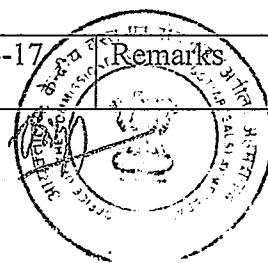
(iii) They have charged service tax on abated value for particular even though not considered by the adjudicating authority. At Para 35 of the impugned order the adjudicating authority has recorded that :

35. I find that in above cases, abatement of 60% has been claimed by the assessee/ Service Provider in invoices issued by them. In such cases, 100% liability of Service Tax is on Service Recipient and, therefore, no Service Tax to be charged on the Invoice by the Service Provider. However, I find that the assessee has charged Service Tax on non-abated value in invoices issued to Ahmedabad and Dehradun assets of M/s ONGC Ltd. and on abated value in invoices issued to Mehsana, Cambay & Kolkata assets of Mis ONGC Ltd.. I, therefore, hold that the assessee is not entitled to avail the benefit of abatement of 60% on gross amount charged from the above assets of M/s ONGC Ltd., during F.Y.2014-15 to F.Y.2016-17, and consequently, the assessee is liable to pay 60%/50% Service Tax on non-abated value of said services during said period, as worked out below :

Particulars	2014-15	2015-16	2016-17	TOTAL
Gross Taxable Value				
M/s ONGC Ltd., Ahmedabad	9315416	16179142	15871906	41366464
M/s QNGC Ltd. Dehradun	0	0	2508624	2508624
M/s ONGC Ltd., Mehsana	3917039	638153	20452	4575644
M/s ONGC Ltd., Cambay	497002	1032781	2546905	4076688
M/s ONGC Ltd., Kolkatta	0	0	2172909	2172909
Total Taxable Value	13729457	17850076	23120796	54700329
Abatement (not admissible)	0	0	0	0
Net Taxable Value	13729457	17850076	23120796	54700329
Rate of S. Tax	12.36%	14.50%	15%	
Total Service Tax Payable	1696961	2588261	3468119	7754341
% of Service Tax payable by the assessee under partial RCM	60%	50%	50%	
Service Tax Payable by the assessee	1018177	1294131	1734060	4046368
S. Tax paid as per ST-3 returns filed	201530	1047918	1298031	2547479
S. Tax short paid by the assessee	816647	246213	436029	1498889

(iv) On the basis of the above they contended that although the adjudicating authority hub principally agreed on the fact of eligibility of abatement ko the appellant however he has not allowed the same. They further submitted a detailed calculation table as below:

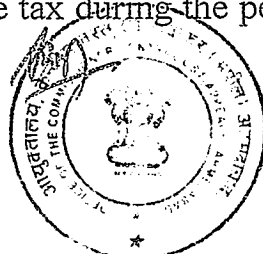
Sr. No	Particular	2014-15	2015-16	2016-17	Remarks	Appeal
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1	ONGC, Ahmedabad	9315416	16179142	15871906	50% of Tax Value	Claim already accepted
2	ONGC, Mehsana	3917039	638153	20452	60% abatement	Request for consideration in this appeal
3	ONGC, Cambay	497002	1032781	2546905	60% abatement	Request for consideration in this appeal
4	Assam petroleum limited	12716919	15153480	9811533	recipient liable to pay service tax	Request for consideration in this appeal
5	ONGC Ankleshwar	0	7884671	6814084	recipient liable to pay service tax	Request for consideration in this appeal
6	Vishal enterprise	zero	0	0		
7	ONGC Kolkata	0	0	2172909	60% abatement	Request for consideration in this appeal
8	ONGC Dehradun	0	0	2508624	50% RCM	Claim already accepted
9	Turnover as per 26AS	2644 6376	408 88 227	3982 5397		
10	Turnover as per 3CD	2667 7931	30984575	39829397		
11	Turnover as per P&L A/c	26677931	3098 4575	39829398		
12	gross taxable turnover	1372 9457	1785 0076	23199780		
13	abatement	2648425	17850076	23199780	As per working	Request for consideration in this appeal
14	partial RCM	465 7708	8089571	9190265	As per working	Claim already accepted
15	taxable value	6423324	8757945	1116 5355		
16	Tax Rate	12.36%	14.50%	15%		
17	Service Tax	793923	1269902	1674803		
18	Service Tax Paid	233882	1297215	2160479	As sheet in SCN	
19	Net	560041	-27313	-485676	47052	

they also submitted copies of relevant contracts find sample invoices in clarification of the above figures. They requested to consider these and allow them deduction as per the working shown in the table.

(iv) They submitted that the adjudicating authority has not considered the entire amount of service tax paid by them and also confirmed by the final audit report. As per para 9 of the show cause notice it is confirmed that when amount of Rs. 36,91,576/- was paid by them as service tax during the period by way of





various challans. However, the adjudicating authority has gone beyond the showcase notice and considered the paid amount of service tax as Rs. 25,47,479/- . Hence, they contended that the actual amount of service tax paid by them should be considered instead of the amount wrongly considered by the adjudicating authority.

(iv) they further submitted that as there is no liability of service tax therefore penalty cannot be imposed on them. They relied on the decision of *Hon'ble Supreme Court in the Hindustan steel v State of Orissa 1978 ELT (J159)*

5. Personal hearing in the case was held on 23.06.2023. Shri Arpan Yagnik, Chartered Accountant, appeared as authorized representative of the appellant for hearing. He submitted that they provided rent a cab service which was eligible for payment of service tax on RCM basis on abated value by the recipient. The cases where RCM was not applicable they had paid applicable service tax and filed service tax return. These challans were submitted to the audit party and have been mentioned in the show cause notice. However the lower authority at the time of adjudication has considered only part value of the challan towards discharge of tax liability. They have provided details of challans and the tax payable on page 55 of the appeal memorandum. After considering all the challans the tax liability of the appellant becomes nil. Therefore he requested to set aside the order in original.

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions made during the personal hearing, and materials available on records. The issue before me for decision is whether the impugned order confirming the demand of Service Tax amounting to Rs.14,98,889/- alongwith interest and penalties, in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to the period F.Y. 2014-15, F.Y. 2015-16 and F.Y. 2016-17.

7. It is observed that the SCN in the case was issued in pursuance of the observations of Audit of the Service Tax records of the appellant conducted for the period October-2014 to June-2017 and finalized vide FAR No. 1685/2019-20 (ST) dated 19.06.2020. The appellant did not agree to the observations of Audit regarding demand of interest amounting to Rs. 47,097/- and Service Tax amounting to Rs. 40, 53,777/- alongwith interest and penalty, this resulted in the issuance of the SCN in

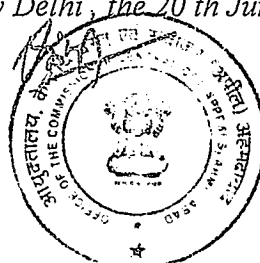


the case. I further find that the demand of Service Tax amounting to Rs. 40,53,777/- was quantified by audit in the SCN after considering the service tax amounting to Rs. 34,81,576/- being the amount paid/deposited by the appellant during the period F.Y. 2014-15, F.Y. 2015-16 and F.Y. 2016-17. It is also observed that the entire amount of Rs. 34,81,576/- was deposited in respect of the services rendered by them under 'Rent-a-cab service'. It is also observed that the adjudicating authority has recorded at Para – 22 of the impugned order that the appellants have paid/deposited an amount of Rs. 25,47,479/- against 'Rent-a-cab service' during the period F.Y. 2014-15, F.Y. 2015-16 and F.Y. 2016-17. Upon examining the above figures, I find that the adjudicating authority has erred in calculating the amount of Service Tax paid/deposited by the appellant during the period F.Y. 2014-15, F.Y. 2015-16 and F.Y. 2016-17. I also find force in the contentions of the appellant in this regard and as per the facts recorded in the FAR and SCN issued by Audit, I am of the considered view that the appellants have deposited an amount of Rs. 36,91,576/- against Service Tax during the relevant period. This mis-determination of facts have rendered the impugned order incorrect and legally unsustainable.

7.1 I also find that the SCN issued in the matter had quantified the amount of demand after properly considering the amount Service Tax deposited by the appellant during the period. Hence, assessment for the period October-2014 to June-2017 was concluded by Audit after issuance of the SCN. However, the adjudicating authority have once again re-considered the assessment concluded by audit and dropped part of the demand without considering the facts of deposition of duty already confirmed by the FAR. In view of the above I find that the adjudicating authority has travelled beyond the scope of the SCN in adjudicating the case and has rendered the impugned order defective and unsustainable.

8. I further find that the appellants have contended that in respect of the services rendered by them under 'Rent-a-cab Service', they have claimed abatement in terms of Notification No. 30/2012-ST dated 20.06.2012, as amended and 26/2012-ST dated 20.06.2012, as amended. Relevant portions of both the above notifications are reproduced below for proper understanding :

*Government of India  
Ministry of Finance  
(Department of Revenue)  
Notification No. 30/2012-Service Tax  
New Delhi, the 20<sup>th</sup> 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:-

...

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
...	...	...	...
7	(a) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on abated value to any person who is not engaged in the similar line of business	Nil	100 %
	(b) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on non abated value to any person who is not engaged in the similar line of business	60%	40%
...	...	...	...

...

The above notification was amended vide Notification No. 10/2014-ST dated 11.07.2014, which read as :

Government of India  
Ministry of Finance  
(Department of Revenue)

**Notification No.10/2014-Service Tax**

New Delhi, the 11th July, 2014

G.S.R..... (E).- In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), the Central Government, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 30/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 472 (E), dated the 20th June, 2012, namely:-

1. In the said notification,-

...

(ii) in paragraph II, in the TABLE,-

...

(d) in serial number 7, against item (b), in columns (3) and (4), for the existing entries, the entries "50%" and "50%" shall respectively be substituted with effect from the 1st day of October, 2014.

...



Therefore, with effect from 01.10.2014, Sr.No.7 of the Table should be read as below

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
7	(a) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on abated value to any person who is not engaged in the similar line of business (b) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on non abated value to any person who is not engaged in the similar line of business	Nil  50%	100 %  50%

Government of India  
Ministry of Finance  
(Department of Revenue)

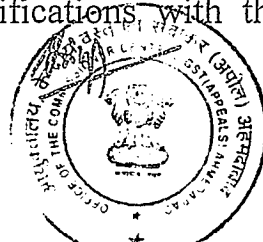
Notification No. 26/2012- Service Tax  
New Delhi, the 20 th June, 2012

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 17 th 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 17 th 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 Service	Percentage	Conditions
1	2	3	4
1	...		
9	Renting of any motor vehicle designed to carry passengers	40	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.
...	...		

...

8.1 Examining the provisions of the above notifications with the facts and



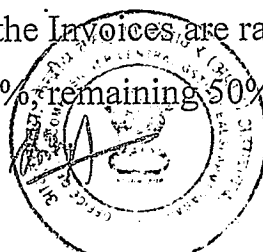
circumstances of the case I find that the appellants have contended that in respect of the services provided by them under 'Rent-a-cab-service' to various service receivers they have claimed exemption under the above notifications. I also find that they have provided services to various assets of M/s ONGC, M/s Vishal Enterprise and M/s Assam Petroleum. The audit has confirmed vide the FAR and SCN that in respect of services provided to M/s Assam Petroleum and M/s ONGC Ltd., Ankleshwar, the appellant were eligible for 100% RCM in terms of Notification No. 30/2012-ST dated 20.06.2012.

8.2 Further, I also find that, the appellants have contended that they are eligible for the benefit of abatement in terms of Notification No. 26/2012-ST dated 20.06.2012. They have submitted a confirmation regarding non-availment of Cenvat credit in respect of the rent-a-cab services provided by them. Therefore I find that the appellants are eligible for the benefit of abatement in terms of Sr.No.9 of Notification No. 26/2012-ST dated 20.06.2012 in respect of the services pertaining to Rent-a-cab service provided by them during the period October-2014 to June-2017.

9. I further find that regarding the issue of eligibility of the appellant for availing the benefit of notification No. 30/2012-ST dated 20.06.2012, as amended, in respect of the services provided to M/s ONGC, Ahmedabad, M/s ONGC, Mehsana, M/s ONGC, Cambay, M/s ONGC, Dehradun and M/s Vishal Enterprise. As per the SCN, the taxable values in respect of all the above service receivers are as per table below :

Sr. No.	Name of Service Receiver	Taxable Value as per SCN (in Rs.)			Grand Total of Taxable Value (in Rs.)
		F.Y. 2014-15	F.Y. 2015-16	F.Y. 2016-17	
1	ONGC, Ahmedabad	93,15,416/-	1,61,79,142/-	1,58,71,906/-	4,13,66,464/-
2	ONGC, Mehsana	39,17,039/-	6,38,153/-	20,452/-	45,75,644/-
3	ONGC, Cambay	4,97,002/-	10,32,781/-	25,46,905/-	40,76,688/-
4	ONGC, Kolkata	0	0	21,72,909/-	21,72,909/-
5	ONGC, Dehradun	0	0	25,08,624/-	25,08,624/-
6	Vishal Enterprises	0	0	78,984/-	78,984/-

9.1 I also find that in terms of the Notification No. 30/2012-ST dated 20.06.2012, as amended, in case the Invoices are raised by the appellant on 'abated value' they are eligible for 100% - RCM. While in cases where the Invoices are raised on 'non-abated value' they are eligible for partial RCM @ 50%, remaining 50% being rested



with the service receiver. I further find that, the adjudicating authority has examined all the Invoices presented by the appellant and recorded at Para 27 to 34 of the impugned order that, they have issued Invoices at abated value to M/s ONGC, Kolkata, ONGC, Cambay and ONGC, Mehsana. While they have issued Invoices at non-abated value to M/s ONGC, Ahmedabad and ONGC, Dehradun. It is also observed that this fact has not been disputed by the appellant.

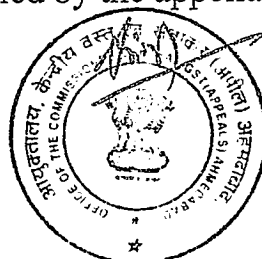
9.2 In view of the above, I find that the appellants are eligible for partial RCM @ 50% in respect of services provided to M/s ONGC, Ahmedabad and ONGC, Dehradun. While in the case of Invoices issued to M/s ONGC, Kolkata, ONGC, Cambay and ONGC, Mehsana they are eligible for 100% RCM. Further, in respect of the services provided to M/s Vishal Enterprise, I find that the appellant have submitted a copy of contract with the service receiver alongwith the appeal papers. In the said contract it is categorically mentioned that the burden of Service Tax would be borne by M/s Vishal Enterprise. Therefore, in case of the Services provided to M/s Vishal Enterprise they are eligible for 100%-RCM.

10. In view of the above discussions, I am of the considered view that :

(i) the appellants have paid total Service Tax amounting to Rs. 36, 91,576/- during the period F.Y. 2014-15, F.Y. 2015-16 and F.Y. 2016-17. This fact was not considered by the adjudicating authority, and in lieu of the actual deposit amount of Rs. 36, 91,576/- and amount of Rs.25,47,479/- was considered. Hence an amount of Rs.11,44,097/- is required to deducted from the Service Tax demand of Rs.14,51,837/-. Therefore the net demand would be Rs.3,07,740/-

(ii) The appellants are found eligible for availing the benefit of abatement in terms of Notification No. 26/2012-ST dated 20.06.2012 and for the benefit of partial Reverse Charge Mechanism (RCM) @ 50% as well as Reverse Charge Mechanism (RCM) @ 100% in respect of services provided to some various body corporates discussed in the foregoing.

11. Accordingly, the demand of service tax amounting to Rs. 14,51,837/- confirmed vide the impugned order is set aside. As the demand fails to sustain the issue of interest and penalty does not arise. Appeal filed by the appellant is allowed.

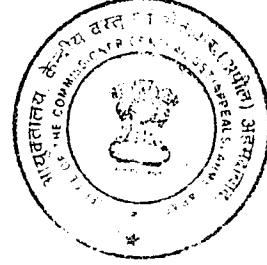


12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
The appeals filed by the appellant stands disposed of in above terms.

*Shiv*  
31-7-23  
(SHIV PRATAP SINGH)  
Commissioner (Appeals)  
Dated: 31 July, 2023

Attested:

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



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- ✓ 5. Guard File.
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