



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015
GST Bhavan, Ambawadi, Ahmedabad-380015
Phone: 079-26305065 - Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in
Website : www.cgstappealahmedabad.gov.in

75
आज़ादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20230864SW000071767B

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/2670/2022-APPEAL / <i>HN 85-89</i>
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-069/2023-24 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. 54/AC/DEM/MEH/ST/S R CHAUDHARY & CO/2022-23 dated 13.06.2022 passed by The Assistant Commissioner, CGST, Division-Mehsana, Gandhinagar Commissionerate.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s S.R. Chaudhary & Co., 54 - Urmi Shopping Centre, B.K. Cinema Road, 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 अतः नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की 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 मामले 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 ईए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

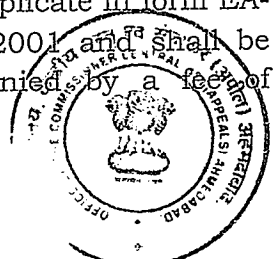
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(2) उक्तलिखित परिच्छेद में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004. In case of appeals other than as mentioned above para.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of



Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रु 6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

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

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

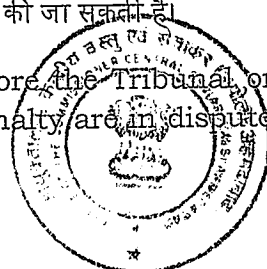
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

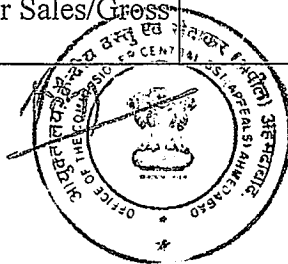
This order arises out of an appeal filed by M/s S.R.Chaudhary & Co., 54-Urmi Shopping Centre, B.K.Cinema Road, Mehsana, Gujarat, 384002 (hereinafter referred to as the "*appellant*") against Order-In-Original No. 54/AC/DEM/MEH/ST/S R Chaudhary & Co./2022-23, dated 13.06.2022 (hereinafter referred to as the "*impugned order*"), issued by Assistant Commissioner, CGST & C.Ex., 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. ABLFS4617DSD002 for providing taxable services. As per the information received from the Income Tax department, discrepancies were observed by the jurisdictional officers in the total income declared in Income Tax Returns/Form-26AS, when compared with Service Tax Returns (ST-3) of the appellant for the period F.Y. 2014-15. In order to verify the said discrepancies as well as to ascertain the fact whether the appellant had discharged their Service Tax liabilities properly during the period F.Y. 2014-15, letter dated 19.06.2020 was issued to them through e-mail by the department. The appellant failed to submit the required details. It was also observed by the jurisdictional officers that the nature of services provided by the appellant were covered under the definition of 'Service' as per Section 65B (44) of the Finance Act, 1994, and their services were not covered under the 'Negative List' as per Section 66D of the Finance Act, 1994, nor were they exempted vide the Mega Exemption Notification No. 25/2012-S.T., dated 20.06.2012 (as amended). Hence, the services provided by the appellant during the relevant period were considered taxable.

3. In the absence of any other available data for cross-verification, the Service Tax liability of the appellant for the F.Y. 2014-15 was determined on the basis of value of difference between 'Sales of Services under Sales/Gross Receipts from Services (Value from ITR)' as provided by the Income Tax department and the 'Taxable Value' shown in the Service Tax Returns for the relevant period as per details below:

TABLE

Sr. No.	Details	F.Y. 2014-15 (Amount in Rs.)
1	Taxable value as per Income Tax Data i.e Total amount Paid/ Credited under Section 194C,194H,194I, 194J or Sales/Gross Receipts from Services (from ITR).	3,92,91,453/-



2	Taxable Value declared in ST-3 Return	1,02,17,783/-
3	Difference of Value (Sr.No.1 – 2)	2,90,73,670/-
4	Amount of Service Tax alongwith Cess (12%+2%+1%) short paid/not paid	35,93,505/-

4. The appellant were issued a Show Cause Notice vide F.No. IV/16-13/TPI/PI/Batch 3C/2018-19/Gr.II/3580 dated 25.06.2020 (SCN for short), wherein it was proposed to:

- Demand and recover Service Tax amount of Rs. 35,93,505/- under the proviso to Section 73 (1) of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 ;
- Impose penalty under Section 77(2), 77(c) and 78 of the Finance Act, 1994.

5. The said Show Cause Notice was adjudicated vide the impugned order wherein:

- Demand for Rs. 35,93,505/- was confirmed under the proviso to Section 73(1) of the Finance Act, 1994 alongwith Interest under Section 75 of the Finance Act, 1994;
- Penalty amounting to Rs. 35,93,505/- was imposed under Section 78 of the Finance Act, 1994 alongwith option for reduced penalty vide clause (ii) of the second proviso to Section 78(1) of the Finance Act, 1994
- Penalty of Rs. 10,000/- was imposed under Section 77(2) of the Finance Act, 1994;
- Penalty @ Rs.200/- per day till the date of compliance or Rs.10,000/-, whichever is higher, was imposed under the provisions of Section 77(1)© of the Finance Act, 1994.

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

- They are a Proprietorship firm engaged in the activity of providing services in relation to 'Rent-a-cab Service', 'Supply of Manpower Service', and 'House Keeping and Cleaning Service' during the period F.Y. 2014-15. They have filed their ST-3 returns as well as Income Tax Returns. They had submitted a detailed reply before the adjudicating authority which was not considered.
- During the relevant period they have provided services to Government / Government organisations, or body corporates. The services are either

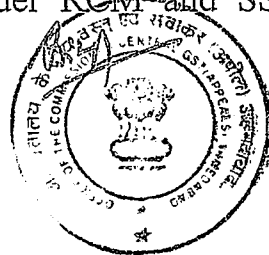


exempted from Service Tax or covered under Reverse Charge Mechanism (RCM).

➤ Quantum and Category of services provided are tabulated below :

(A) Details of exempted incomes, which were not shown in ST-3 Returns:				
Sr.No	Details	Amount (in Rs.)	Category of Expense/Service	Exemption Notification.
1	Interest Income	123562	Interest	Negative List Section 66D
2	Modasa Nagarpalika	521397	Road &. Sanitization cleaning	25/2012-ST (25)
3	Bhada Avak Collector	332400	Collector office cleaning trip	25/2012-ST (25)
4	Palanpur Court	519300	Cleaning	25/2012-ST (25)
5	Abad.CP Office	3143414	Cleaning	25/2012-ST (25)
6	Bhuj	3512381	Cleaning	25/2012-ST (25)
7	Vijay Nagar	441756	Cleaning	25/2012-ST (25)
8	Patan	1725600	Cleaning	25/2012-ST (25)
	TOTAL – (A)	10319810		
(B) Details of Income on which tax paid by Service Recipients under RCM:				
9	Jal Bhavan	507023	Rent A Cab	30/2012-ST
10	Sardar Sarovar Narmada Nigam Ltd (SSNNL)	1459073	Rent A Cab	30/2012-ST
11	ONGC	1372200	Rent A Cab Vehicles	30/2012-ST
12	Vishal Enterprise	1188000	Rent A Cab Emergency Vehicle	30/2012-ST
13	Dharoi Darn SSNNL Branch	2142434	Rent A Cab Jeep	30/2012-ST
14	SSNNL Jap	2061386	Rent A Cab Jeep	30/2012-ST
15	Truck Bhadu	633948	Truck Bhadu	30/2012-ST
16	Truck Bhadu GEB	408780	Truck Bhadu	30/2012-ST
17	Loading Bhada GEB	276826	Loading Bhadu	30/2012-ST
18	SSNNL Kadi	1732742	Rent A Cab Jeep	
	TOTAL- (B)	11782412		
C) Details of Works on which GTA tax paid by the assessee:				
19	GTA	15692395	Bhada Avak	
20	Taxi	451632	Rent A Cab	
21	Collector	1030382		
	TOTAL- (C)	17174409		
	GRAND TOTAL (A+B+C)	39276631		

➤ From the above table it is clear that the adjudicating authority have not considered the submissions. Regarding the services provided to M/s SSNNL – a body corporate is covered under RCM and SSNNL have

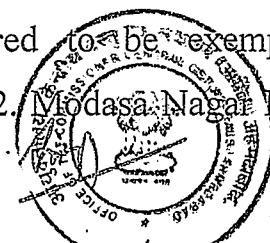


furnished certificate of payment of service tax also. These confirm the fact that the service tax was paid by M/s SSNNL under RCM.

- A sample bill raised by the appellant for hiring of Motor Vehicle and corresponding certificate of payment issued by M/s SSNNL also clarifies the issue raised by the adjudicating authority regarding the value of TDS deducted and deposited in Government account is covered.
- Hence it is clear that the amount of tax deducted by the service receiver/body corporate was deposited in the Govt. Account. Therefore, the services of hiring of vehicle provided to body corporates are not liable for payment of service tax by the appellant. The services provided to M/s SSNNL, M/s ONGC and M/s GEB are tabulated below :

Work on which tax paid by the Service Recipient				
Sr.No	Particulars	Amount in Rs.	Nature of Service	Exemption Notification.
1	Jal Bhavan	507023	Rent A Cab	30/2012-ST
10	Sardar Sarovar Narmada Nigam Ltd (SSNNL)	1459073	Rent A Cab	30/2012-ST
11	ONGC	1372200	Rent A Cab Vehicles	30/2012-ST
12	Vishal Enterprise	1188000	Rent A Cab Emergency Vehicle	30/2012-ST
13	Dharoi Darn SSNNL Branch	2142434	Rent A Cab Jeep	30/2012-ST
14	SSNNL Jap	2061386	Rent A Cab Jeep	30/2012-ST
15	Truck Bhadu	633948	Truck Bhadu	30/2012-ST
16	Truck Bhadu GEB	408780	Truck Bhadu	30/2012-ST
17	Loading Bhada GEB	276826	Loading Bhadu	30/2012-ST
18	SSNNL Kadi	1732742	Rent A Cab Jeep	
	TOTAL-	11782412		

- Although the learned Adjudicating Authority has accepted the fact of providing cleaning and sanitation services but did not grant exemption for the same under Notification No. 25/2012-ST dated 20.06.2012 which was actually available to us.
- An amount of Rs.1,23,562/- was also earned by the appellant as Interest Income and the same is exempted under Section 66D (n) of the Finance Act, 1994.
- Road Cleaning services amounting to Rs. 5,21,937/- was provided to Modasa Nagarpalika which also is required to be exempted vide Notification No. 25/2012-ST dated 20.06.2012. Modasa Nagar Palika is a



local Governmental authority and the adjudicating authority even after admitting the fact of provision of service, did not allow the exemption. The copy of ledger account of Modasa Nagar Palika is also submitted for consideration.

- The appellant is also engaged in carrying out cleaning and maintenance services of various Court buildings and government office buildings. They are detailed as below table :

Sr. No	Particulars	Amount in Rs.	Exemption Notification.
1	Palanpur Court Cleaning	519300	Notification No. 25/2012-ST
2	Ahmedabad CP Office Cleaning	3143414	Notification No. 25/2012-ST
3	Bhuj Cleaning	3512381	Notification No. 25/2012-ST
4	Vijaynagar Cleaning	441756	Notification No. 25/2012-ST
5	Patan Cleaning	1725600	Notification No. 25/2012-ST

- These services are provided to all Government bodies and are eligible for exemption vide Sr. No. 12 of Notification No. 25/2012-ST dated 20.06.2012.
- A reconciliation with the books is submitted as per Table below :

Reconciliation of Value

Turnover	A	39276631
Less : Exempted	B	10319810
	C=A-B	28956821
Less : Work on which Tax paid by service recipient 100%	D	11782412
Value on which Tax Paid	E=C-D	17174409

The appellant hereby request you to consider the same and drop the proceedings.

- The SCN was issued on the basis of data received from Income tax department without any verification and inquiry. Hence the notice was more of an informative notice. Further as the appellant have submitted Income Tax and ST-3 Returns so there was no suppression of facts or mis-information.
- The SCN is time barred as per the provision of Section 73 of the Finance Act, 1994 and is required to be quashed and proceedings are required to be dropped.



- The appellant would like to state that the adjudicating authority has levied Penalty under Section 70, 77 and 78 of the Finance Act, 1994, however as per the discussions above since the demand of Service Tax is not sustainable, penalty cannot be imposed.
- They relied upon on the following decisions :
 - Decision of the Hon'ble Supreme Court in the case of M/s. Cosmic Dye chemical Vs Collector of Cen. Excise, Bombay [1995 (75) E.L.T. 721 (S.C.)
 - Decision of the Hon'ble Supreme Court in the case of Hindustan steel v State of Orissa 1978 ELT (J159)

7. Personal hearing in the case was held on 18.05.2023. Shri Arpan Yagnik, Chartered Accountant, appeared on behalf of the appellant for hearing. He reiterated the submissions made in the appeal memorandum.

7.1 On account of change in the appellate authority, Personal Hearing was again conducted on 23.06.2023. Shri Arpan Yagnik, Chartered Accountant, appeared on behalf of the appellant for hearing. He submitted that the appellants provided services of road and sanitation to Government agencies which is exempt under Serial No. 25 of notification No. 25/2012-ST. The certain tax service provided by the appellant is liable to RCM. The service tax has been paid by the recipient and certificate for the same has been submitted by the appellant. The liability of the appellant for rent a cab service is NIL. The appellant has already paid applicable Service Tax where RCM was not applicable or the services which were not exempted. The appellant also filed ST-3 returns for the same. Therefore, no suppression can be alleged against the appellant and extended period cannot be invoked. Therefore, he requested to set aside the Order-in -Original on both grounds on merits as well as on limitations.

8. I have carefully gone through the facts of the case, submissions made in the Appeal Memorandum as well as submissions made at the time of personal hearing and the materials available on the record. The issue before me for decision is as to whether the impugned order confirming the demand of Service Tax amounting to Rs. 35,93,505/- along with interest and penalties, in the facts and circumstances of



the case, is legal and proper *or* otherwise. The demand pertains to the period to the F.Y. 2014-15.

9. It is observed that the appellant is registered with Service Tax department and have filed their Service Tax Return (ST-3) during the relevant period. However, the SCN was issued entirely on the basis of data received from Income Tax department and without classifying the Services rendered by the appellant. The impugned order was issued without causing any further verifications in this regard. It is also observed that the appellant had submitted a detailed reply in their defense before the adjudicating authority as well as they defended their case in person before the authority. However, it is apparent from the impugned order that it was issued indiscriminately without considering the submissions of the appellant and without verification of the documents submitted.

9.1 I find it relevant here, to refer to the CBIC Instruction dated 26.10.2021, wherein at Para-3 it is instructed that:

*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- 21st October, 2021

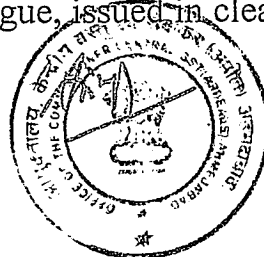
*To,
All the Pr. Chief Commissioners/Chief Commissioners of CGST & CX Zone, Pr.
Director General DGGI*

Subject:-Indiscreet Show-Cause Notices (SCNs) issued by Service Tax Authorities-reg.

Madam/ Sir,

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

Considering the facts of the case and the specific Instructions of the CBIC, I find that the SCN as well as the impugned order has been passed indiscriminately and mechanically without application of mind, and is vague, issued in clear violation of the instructions of the CBIC discussed above.



10. It is further observed that the assessment made by the appellant in the ST-3 return (filed on 24.04.2015) was not disputed by the department. Hence, the classification of service, abatement/RCM claimed and availed by the appellant during the period F.Y. 2014-15 stands undisputed. The SCN in the case was issued on 25.06.2020. It is further observed that the adjudicating authority was aware of the above facts and have recorded them at Para-17.1 of the impugned order. However, the demand of Service Tax was confirmed invoking the extended period of limitation vide the impugned order. Hence, the SCN in the case was issued beyond a period of 05 Yrs from the relevant date i.e 24.04.2015 without considering the fact of filing the statutory return by the appellant. Further, the demand of service tax confirmed under Section 73 of the Finance Act, 1994 vide the impugned order invoking the extended period of limitation is legally unsustainable being passed indiscriminately without application of mind and is liable to be set aside on grounds of limitation alone.

11. It is observed that the appellant have provided 'Rent-a-cab Service', 'Supply of Manpower Service', and 'House Keeping and Cleaning Service' during the period F.Y. 2014-15. The appellants have contended that services provided by them during the relevant period was divided into three parts :

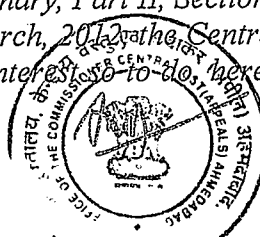
- o Services which were exempted by virtue of Sr.No.25 of Notification No. 25/2012-ST dated 20.06.2012 and hence, were not reflected in their ST-3 Returns.
- o Services which were covered under partial/100% Reverse Charge Mechanism (RCM) vide Notification No. 30/2012-ST dated 20.06.2012 and the Service Tax liability was borne by the service recipient fully/partially.
- o Services on which the appellants have paid Service Tax as per their assessment and reflected in their ST-3 Returns.

11.1 Relevant portion of Notification No. 25/2012-ST dated 20.06.2012 is reproduced below :

Government of India
Ministry of Finance
(Department of Revenue)

Notification No. 25/2012-Service Tax
New Delhi, 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 12/2012- 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. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest to do so, hereby exempts the



following taxable services leviable thereon under section 66B of the said Act, namely:-

...

25. Services provided to Government, a local authority or a governmental authority by way of -

(a) carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or

(b) repair or maintenance of a vessel or an aircraft;

...

Upon examining the above legal provisions with the facts and circumstances of the case and the documents submitted by the appellant, I find force in the argument of the appellant that Services provided by them amounting to Rs. 1,03,19,810/- stands covered under Sr.No.25 (a) of Notification No. 25/2012-ST dated 12.06.2012 and are eligible to be exempted from the levy of Service Tax.

11.2 Relevant portion of Notification No.30/2012-ST dated 20.06.2012 as amended vide Notification No. 10/2014-ST dated 11.07.2014 is reproduced below :

Government of India
Ministry of Finance
(Department of Revenue)

Notification No. 30/2012-Service Tax

New Delhi , the 20 th June, 2012

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

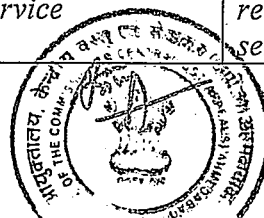
I. The taxable services,-

...

(v) provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not in the similar line of business or supply of manpower for any purpose or service portion in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory;

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

Sr. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service

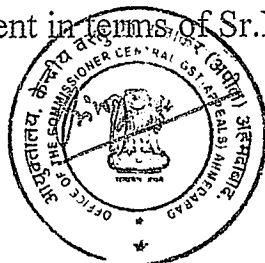


1			
7	(a) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on abated value to any person who is not engaged in the similar line of business.	NIL	100%
	(b) in respect of services provided or agreed to be provided by way of renting 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	50%	50%

Upon examining the above legal provisions with the facts and circumstances of the case I find that the appellants are a proprietorship concern and have provided 'Rent-a-cab Service' to various entities like ONGC Limited, M/s Sardar Sarovar Narmada Nigam Limited (SSNNL), in such cases I find that the appellants are eligible for payment of service tax on 100% Reverse Charge Mechanism (RCM) by the service recipient. I also find that the appellant have produced some certificates from the service recipient confirming the payment of service tax.

11.3 It is also observed that the appellants have contended that they have provided loading and unloading services – categorized under 'Goods and Transport Agency (GTA)' service to M/s UGVCL, Himmatnagar (Uttar Gujarat Vij Company Limited) and M/s GETCO, Gandhinagar (Gujarat Energy Transmission Corporation Limited). These facts has also been acknowledged by the adjudicating authority vide Para-19 of the impugned order. Examining the scope of these services provided by the appellant with the provisions of Notification No. 30/2012-ST dated 20.06.2012, as amended as claimed by the appellant, I find that the appellant being Proprietorship firm and the service receivers being 'Body Corporates' the appellants are eligible for payment of service tax on 100% Reverse Charge Mechanism (RCM) by the service recipient in terms of Sr.No.2 (of table) of Notification No. 30/2012-ST dated 20.06.2012, as amended.

11.4 It is further observed that in respect of the 'Rent-a-cab services' provided to M/s Vishal Enterprise, the copy of contract produced by the appellant clearly mentions that entire liability of Service Tax was to be borne by M/s Vishal Enterprise. Therefore these services are also eligible for payment of service tax on 100% Reverse Charge Mechanism (RCM) by the service recipient in terms of Sr.No.7(a) (of table) of Notification No. 30/2012-ST dated 20.06.2012.

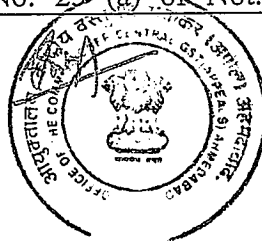


11.5 It is also observed that the appellants have contended to have provided Cleaning and Sanitation Services to various Govt. Authorities e.g. Modasa Nagarpalika, Court Building at Palanpur, Bhuj, Vijay Nagar, Patan and Cleaning and Sanitation Services to the building of Commissioner of Police, Ahmedabad and various other offices under the said Commissionerate, from the documents submitted by the appellant it is apparent that all these services were provided to entities classifiable under the category of 'Government Body'. In this regard they have produced relevant documents and the same was also recorded by the adjudicating authority in the impugned order. Upon examining the above facts with the provisions of the Notification No. 25/2012-ST dated 20.06.2012, I find that these services are eligible for exemption vide Sr.No. 25 (a) of Notification No. 25/2012-ST dated 20.06.2012, as amended.

11.6 The appellants have further contended that during the period F.Y. 2014-15 they have paid a total amount of Rs.17,66,848/- towards payment of service tax. Documents submitted by them support their claim. Considering the same I find that the SCN and impugned order has been issued considering the fact that the appellant have paid Service Tax on a taxable value of Rs. 1,02,17,783 /-. Considering the said taxable value corresponding amount of Service Tax comes to Rs. 12,62,918/-. However, the details of GAR-7 Challans submitted by the appellant confirms that they have paid an amount of Rs.17,66,848/- towards service tax during the relevant period. From the above it is also confirmed that during the period F.Y. 2014-15 the appellants have paid Service Tax on a total taxable value of Rs.1,42,94,887/- and not Rs. 1,02,17,783 /- as shown in their ST-3 returns. Therefore an additional taxable value of Rs. 40,77,104/- is required to be considered for reconciliation of the figures. Appellants have also contended that the above discrepancy has occurred due to non filing of the ST-3 Returns for the period April-201 to Sep.2014 during the F.Y. 2014-15.

12. In view of the above discussions I find that as per the details of reconciliation statement submitted by the appellant the quantum of services provided and exemptions/abatements claimed by them in the period F.Y. 2014-15 is tabulated as below :

Sr. No.	Classification of Service	Remarks	Amount (in Rs)
1	Services provided to Government, a local authority or a governmental authority by way	Exempted vide Sr. No. 25 (a) of Not.	1,01,96,248/-

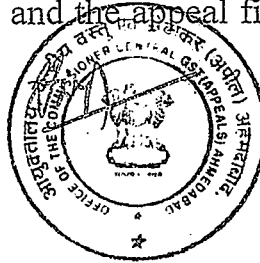


	of - (a) carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation ;	No. 25/2012-ST.	
2	GTA, Services provided in respect of or agreed to be provided by a Goods Transport Agency (GTA) in respect of transportation of goods by road ;	Covered under 100% RCM vide Sr. No. 2 of table of Not. No.30/2012-ST.	1,17,82,422/-
3	Rent-a-Cab, 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	Covered under 100% RCM vide Sr. No. 7(a) of table of Not. No.30/2012-ST.	
4	GTA Services provided to a Body Corporate M/s CTA Logistics Ltd. by way of Bundled Services of GTA as well as Loading and Unloading (Manpower Supply Service)	Paid Service Tax @ 12.36% on the Invoice Value.	1,56,92,395/-
5	Vehicle provided on rent to the Income Tax department Services provided to Government, a local authority or a governmental authority		4,51,632/-
6	Vehicle provided on rent to the office of the District Collector, Himmatnagar- Services provided to Government, a local authority or a governmental authority		10,30,382/-
7	Income from Interest	Exempted - Under Negative List of Services Section 66D of the FA,1994	1,23,152/-
		Total	3,92,76,231/-
7	S D (Security Deposit)	Not under Service Tax.	15,217/-
8	Dividend Income	Non-taxable	1,400/-
		Grand Total	3,92,92,848/-

Upon examining the figures reflected in the above table with the Profit & Loss Account and Balance Sheet and other documents submitted by the appellant I find that the entire amount reflected in the SCN stands reconciled.


11. In view of the above discussions, I am of the considered opinion that the adjudicating authority has failed to extend the benefit of exemption/abatement to the appellant in respect of the services eligible for such benefits. Accordingly, the demand of service tax amounting to Rs. 35,93,505/- confirmed by the impugned order is liable to be set aside. As the demand is not sustainable, question of interest and penalty does not arise.

12. Therefore, the impugned order is set aside and the appeal filed by the appellant is allowed.




13. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

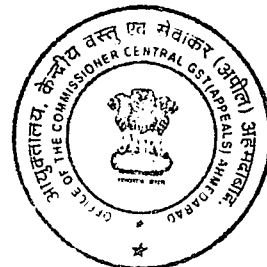
The appeal filed by the *appellant* stands disposed of in above terms.


(Shiv Pratap Singh)
Commissioner (Appeals)

Date: 31 July, 2023

Attested


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



BY RPAD / SPEED POST

To,
M/s S.R.Chaudhary & Co.,
54-Urmi Shopping Centre,
B.K.Cinema Road, Mehsana,
Gujarat, Pin – 384002,

Copy to: -

1. The Principal Chief Commissioner, CGST & C.Ex., Ahmedabad Zone.
2. The Principal Commissioner, CGST & C.Ex., Commissionerate: Gandhinagar.
3. The Assistant Commissioner, CGST & C.Ex., Division- Mehsana, Commissionerate: Gandhinagar.
4. The Superintendent (System), CGST, Appeals, Ahmedabad. (for uploading the OIA).
5. Guard File.
6. P.A. File.