



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:- 20230964SW0000666D68

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/2676/2022-APPEAL / 5489-93
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-089/2023-24 and 28.08.2023
(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	11.09.2023
(ङ)	Arising out of Order-In-Original No. 87/AC/DEM/MEH/ST/M/s Patel Transport Co./2022-23 dated 29.06.2022 passed by the Assistant Commissioner, CGST, Division-Mehsana, Gandhinagar Commissionerate.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Patel Transport Co., Station Road, Kukarvada, Taluka-Vijapur, Mehsana, Gujarat-382830.

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

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

भारत सरकार का पुनरीक्षण आवेदन:-

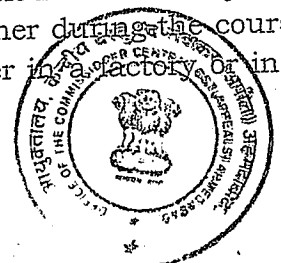
Revision application to Government of India:

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

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

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

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 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 होतो 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.

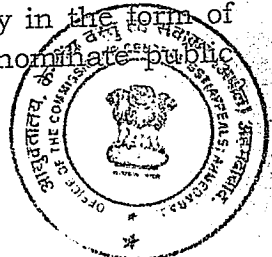
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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, 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 अपील के मामले में कर्तव्यमांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994).

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

(6) (i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

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



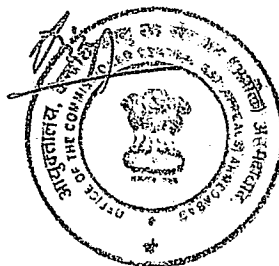
अपीलिय आदेश/ ORDER-IN-APPEAL

The present appeal has been filed by M/s Patel Transport Co., Station Road, Kukarvada, Taluka-Vijapur, Mehsana, Gujarat-382830 [hereinafter referred to as "the appellant"] against 87/AC/DEM/MEH/ST/M/s Patel Transport Co./2022-23 dated 29.06.2022 [hereinafter referred to as "the impugned order"] passed by the Assistant Commissioner, CGST & Central Excise, Division: Mehsana, Gandhinagar Commissionerate [hereinafter referred to as "the adjudicating authority"].

2. Briefly stated, the facts of the case are that the appellant were engaged in providing taxable services viz. 'Rent-a-cab Scheme Operator Service', 'Clearing & Forwarding Agent Service', 'Manpower Recruitment/Supply Agency Service', 'Transport of Goods by Road /Goods Transport Agency Service' and registered under Service Tax Registration No.AABFP8827DST001. As per information received through preventive section, HQ, Gandhinagar vide DG Systems Report No. 02 & 03, discrepancies were observed in the total income declared in the Income Tax Returns (ITR) and Service Tax Returns (ST-3) by the appellant during the period F.Y. 2015-16. Accordingly, letters dated 22.06.2020 & 02.07.2020 were issued to the appellant calling for the details of services provided during the period F.Y. 2015-16. The appellant did not submit any reply. However, the jurisdictional officers considered that the services provided by the appellant during the relevant period were taxable under Section 65 B (44) of the Finance Act, 1994 and the Service Tax liability for the F.Y. 2015-16 was determined on the basis of value of 'Sales of Services' under Sales/Gross Receipts from Services (Value from ITR) and Form 26AS for the relevant period as per details below :

Sr. No	Period (F.Y.)	Differential Taxable Value as per Income Tax Data (in Rs.)	Rate of Service Tax incl. Cess	Service Tax demanded (in Rs.)
1	2015-16	1,21,21,213/-	14.5%	17,57,576/-

3. Show Cause Notice No. V.ST/11A-199/Patel Transport Co./2020-21 dated 29.06.2020 (in short SCN) was issued to the appellant alleging to demand and recover Service Tax amounting to Rs. 17,57,576/- under proviso to Section 73 (1) of 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 77(2), Section 77(c) and Section 78 of the Finance Act, 1994.



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

- Service Tax demand of Rs. 17,57,576/- was confirmed (on differential taxable value of Rs. 1,21,21,213/-) alongwith interest under Section 75 of the Finance Act, 1994.
- Penalty of Rs.10,000/- was imposed under Section 77(2) of the Finance Act, 1994.
- Penalty of Rs.200/- per day till the date of compliance or Rs.10,000/-whichever is higher under the provisions of Section 77 (1) (c) of the Finance Act, 1994.
- Penalty of Rs. 17,57,576/- was imposed under Section 78(1) of the Finance Act,1994 with option for reduced penalty in terms of clause (ii).

5. Aggrieved by the impugned order, the appellant has preferred this appeal on following grounds:

(i) The appellant was engaged in the activity of transportation of goods by road and Rent-a-Cab service. In terms of Notification No.30/2012-ST dated 20.06.2012, the services provided by them stands covered under Reverse Charge Mechanism and the service recipients were liable to pay the Service Tax.

(ii) The appellant was also providing services related to C&F Agency, Loading & Unloading Charges, Godown Rent on which service tax is leviable and duly paid.

(iii) The adjudicating authority has not considered the submissions made by the appellant in respect of the matter.

(iv) Alongwith their appeal memorandum they filed copies of ITR for the period F.Y. 2015-16, Copy of Form – 26AS, copy of ST-3 Returns

6. Personal Hearing in the case was held on 13.06.2023. Shri Nilesh Nihalani, CA appeared for personal hearing on behalf of the appellant. He reiterated submissions made in the appeal memorandum. He submitted a reconciliation statement during the course of hearing.



6.1 On account of change in the appellate authority Personal Hearing was conducted again on 30.06.2023. Shri Nilesh Nihalani, CA appeared for personal hearing on behalf of the appellant. He reiterated the submissions made in the appeal and those made at the time of earlier personal hearing on 13.03.2023. He submitted that the appellant is a GTA, who provided transport service to Cement Companies wherein applicable Service Tax was paid on Reverse Charge Mechanism (RCM) basis. A reconciliation statement has already been submitted by them. Based on the same he requested to set aside the impugned order.

7. I have carefully gone through the facts of the case available on record, grounds of appeal in the appeal memorandum, additional written submission, oral submissions made during personal hearing and the impugned order passed by the adjudicating authority. The issue before me to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of service tax amounting to Rs. 17,57,576/- under proviso to Section 73 (2) of Finance Act, 1994 alongwith interest, and imposing penalties under Section 77(2) and Section 78 of the Finance Act, 1994, in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to the period F.Y. 2015-16.

7. It is observed that the appellant is Proprietorship firm registered under Service Tax. They have filed their ST-3 returns regularly for the period F.Y. 2015-16. It is also observed from their submissions, they were engaged in providing the following services :

- Transport of goods by road/Goods Transport Agency service (GTA for short) – in respect of this service they have claimed abatement by virtue of Sl.No.7 of Notification No. 26/2012-ST dated 20.06.2012.
- Rent-a-cab scheme operator service ;
- Clearing & Forwarding Agent Service ;
- Manpower Recruitment/Supply Agency Service;

7.1 It is further observed that the SCN was issued entirely on the basis of data received from Income Tax department and without classifying the Services rendered by the appellant. Further, the impugned order was issued without causing any further verifications in this regard and the demand was confirmed invoking extended period.



7.2 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,

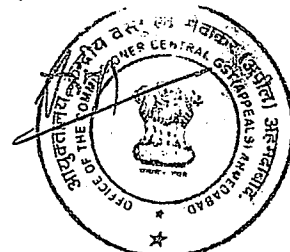
All the Pr. Chief Commissioners/Chief Commissioners of CGST & CX Zone, Pr. Director General DGGI

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 was issued indiscriminately in violation of the above instructions and is vague.

8. The appellant have contended that they provided Services under GTA to M/s Saurashtra Cements Ltd., M/s Gujarat Siddhi Cements and M/s Trinetra Cements Ltd and in terms of Notification No. 30/2012-ST dated 20.06.2012 these services are covered under 100% Reverse Charge Mechanism (RCM), i.e the leviable Service tax is required to be paid by the Service Receivers. From the Form-26AS submitted by the appellant it is also confirmed that they have provided services to M/s Saurashtra Cements Ltd., M/s Gujarat Siddhi Cements and M/s Trinetra Cements Ltd.. However, the appellant have not submitted the copy of contracts with these companies or sample Invoices issued to them. From the details recorded in the impugned order regarding the services provided to these companies it appears that the appellant have entered into a Composite Contract with all the three companies. Further, it is also recorded at Para 15.1 of the impugned order that the appellant has categorically agreed that they had provided services under 'Rent-a-cab scheme operator service' to M/s Trinetra Cements Ltd. and they have not paid the leviable Service Tax on the same. This admission by the appellant is contradictory to what they have claimed.



9.1 From the Form 26AS it is also evident that the appellant have received an amount of Rs. 1,57,79,319/- under Section 194C of the Income Tax Act, 1961 from M/s Saurashtra Cements Ltd., M/s Gujarat Siddhi Cements and M/s Trinetra Cements Ltd. Apart from the said amount they have also received amounts under Section 194IB and Section 194A of the Income Tax Act, 1961 from these three companies. These facts are not explained by the appellant. They have also claimed to have provided services classifiable under GTA to these three companies amounting to Rs. 1,16,29,095/-. Submissions made by the appellant do not establish proper co-relation among these figures. Therefore, the benefit of 100% RCM for the services provided under GTA service cannot be established.

10. The appellants have also submitted a reconciliation sheet/table alongwith their appeal papers. In the said Reconciliation sheet/table they have submitted that as per their ST-3 Return they have declared Services valued at Rs. 27,26,529/- under Vehicle Hire Charges and CFA charges. Whereas upon co-relating the figures reflected in their return it is evident that these figures are only for Carrying and Forwarding Charges, as under 'Rent a Cab Services' they have shown NIL. Hence, the appellants submissions are inconclusive and incoherent.

10.1 It is also confirmed from the documents submitted by the appellant that they have admitted to have suppressed Services amounting to Taxable value of Rs. 4,92,119/-. Hence, the invocation of extended period in confirming the demand is justified.

11. In view of the discussions made above, I am of the considered view that the submissions made by the appellant are not supported by proper documents and are found to be inconsistent and inconclusive, hence they are considered devoid of merits. Accordingly, the appeal filed by the appellant is rejected and the impugned order is upheld.

12. 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.

सत्यापित/Attested:

सौमनाथ चौधरी/SOUMNATH CHAUDHARY
अधीक्षक/SUPERINTENDENT
केन्द्रीय वस्तु एवं सेवाकर (अपील), अहमदाबाद.
CENTRAL GST(APPEALS), AHMEDABAD.

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(SHIV PRATAP SINGH)
Commissioner (Appeals)

Dated: 28th August, 2023



By REGD/SPEED POST A/D

To,

M/s Patel Transport Co.,
Station Road, Kukarwada,
Taluka-Vijapur, Mehsana,
Gujarat-382830

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

