



सत्यमेव जयते

आयुक्त ( अपील ) का कार्यालय,  
Office of the Commissioner (Appeal),  
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद  
Central GST, Appeal Commissionerate, Ahmedabad  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.  
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015  
07926305065- टेलिफैक्स 07926305136



DIN: 20230164SW0000382098

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1293/2022-APPEAL / 7352 -58
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-110/2022-23  
दिनांक Date : 13-01-2023 जारी करने की तारीख Date of Issue 13.01.2023  
आयुक्त (अपील) द्वारा पारित  
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 41/AC/D/KMV/21-22 दिनांक: 22.03.2022, issued by Assistant/Deputy Commissioner, Division-III, CGST, Ahmedabad-North
- ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Dharmendra Parshottamdas Sidhpura,  
81, Harekrushna society,  
Nr. Khodiyar Matanu Mandir,  
Sanand, Ahmedabad-382110

2. Respondent

The Assistant Commissioner, CGST, Division-III, Ahmedabad North , 2<sup>nd</sup> Floor, Gokuldharm Arcade, Sarkhej-Sanand Road - 382210

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर 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 :

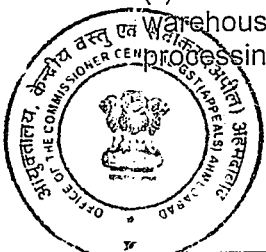
भारत सरकार का पुनरीक्षण आवेदन :  
Revision application to Government of India :

(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।

(i) 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 :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने 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 प्रकिया के दौरान हुई हो।

(ii) 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.



(क) 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।

(A) 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.

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

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

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।

(c) 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.

(1) 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 मुख्यशीर्ष 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.

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

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

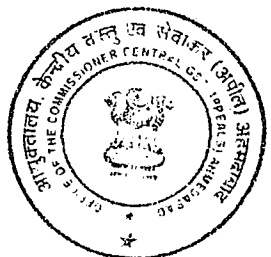
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 :-

(क) उक्तलिखित परिच्छेद 2 (1) क 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

(a) 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 in para-2(i) (a) above.



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 Appellate 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 मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर 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.

- (7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (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 सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग" (Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) 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.

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."



ORDER-IN-APPEAL

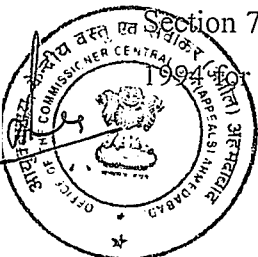
The present appeal has been filed by M/s. Dharmendra Parshottamdas Sidhhpura, 81, Harekrushna Society, Nr. Khodiyar Matanu Mandir, Sanand, Ahmedabad – 382110 (hereinafter referred to as “the appellant”) against Order-in-Original No. 41/AC/D/KMV/21-22 dated 22.03.2022 issued on 25.03.2022 (hereinafter referred to as “the impugned order”) passed by the Assistant Commissioner, Central GST, Division III, Ahmedabad North (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, the facts of the case are that the appellant is holding PAN No. CTLPS4068N. On scrutiny of the data received from the CBDT for the FY 2015-16 and FY 2016-17, it was noticed that the appellant had earned an income of Rs. 16,25,025/- during the FY 2015-16 and Rs. 18,95,258/- during the FY 2016-17, which was reflected under the heads “Sales / Gross Receipts from Services (Value from ITR)” by the Income Tax department. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but has neither obtained Service Tax registration nor paid the applicable service tax thereon. The appellant was called upon to submit copies of Balance Sheet, Profit & Loss Accounts, Income Tax Returns, Form 26AS, for the said period.

2.1 The appellant had vide letter dated 06.10.2020 submitted reply along with copies of Income Tax Returns, Profit & Loss Accounts, Income Tax Returns, Form 26AS, Bank Statement and sample copies of Invoice for the FY 2015-16 and FY 2016-17. The appellant in their letter dated 06.10.2020, inter alia, stated that he is providing Tour and Travelling service in the name of M/s. Sairam Travels; that he is having passenger vehicle and providing pickup and drop service to M/s. Reliable Autotech Private Ltd. for its officers; that M/s. Reliable Autotech Private Ltd. was service receiver and has paid all the Service Tax as per Reverse Charge Mechanism. However, the appellant not submitted relevant document in this regard to prove their case.

2.2 Therefore, the appellant was issued a Show Cause Notice No. III/SCN/DC/Dharmendra /50/20-21 dated 20.10.2020 demanding Service Tax amounting to Rs. 5,03,453/- for the period FY 2015-16 & FY 2016-17, under provision of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; recovery of late fees under Rule 7C of the Service Tax Rules, 1994; and imposition of penalties under Section 77(1)(a) & Section 78 of the Finance Act, 1994. The show cause notice also proposed recovery of unquantified demand under provision of Section 73 of the Finance Act, 1994 for the period from Apr-17 to Jun-17.

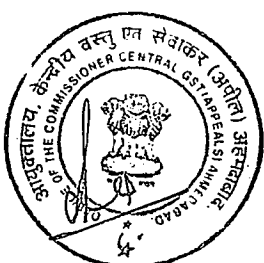
2.3 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 2,99,958/- was confirmed under Section 73(1) of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2015-16 & FY 2016-17 and the remaining demand of Service Tax



amounting to Rs. 2,03,495/- was dropped. Further (i) Penalty of Rs. 2,99,958/- was also imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1)(a) of the Finance Act, 1994 for failure to taking Service Tax Registration.

3. Being aggrieved with the impugned order, the appellant preferred the present appeal on the following grounds:

- The appellant having PAN No. CTLPS4068N was running business in the name of M/s. Sai Ram Travels, and was providing renting of Motor Vehicle Service. During the period of FY 2015-16 to FY 2016-17, the appellant was renting their passenger vehicle having Registration No. GJ-01-DX-5646 & GJ-01-DY-7 623, solely to a corporate M/s. Reliable Autotech Pvt. Ltd., Sanand and the gross value of consideration received by them.
- Renting of Motor vehicles service is having an abatement (i.e. partial exemption) vide Sr. No. 9A of Notification No. 26/2012-ST with a condition that Cenvat credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the Cenvat Credit Rules, 2004. Also as per Notification No. 30/2012-ST, their service falls under the Reverse Charge Mechanism with two option (i) with abated value and (ii) with non abated value.
- After doing the conjoint reading of both the aforesaid notification, one can easily conclude that whether to choose an option of abatement or full value is in the hand of the service provider because first billing point is in the hand of the service provider. From the face of the invoice raised by the service provider, the service recipient can determine the value on which he being a recipient of service is required to pay service tax i.e. whether he should pay service tax on 40% value or 50% value, i.e. if the service provider has not charged any service tax on the face of the invoice then the service recipient can easily conclude that the service provider has chosen the option 7(a) of the Notification No. 30/2012-ST, and if the service provider has charged service tax on 50% of the taxable value on the face of the invoice, then the service provider is said to have chosen the option 7(b) of the Notification No. 30/2012-ST and the service recipient is required to pay balance 50% of the service tax and it will be said as non-abated value as per option 7(b) of the Notification No. 30/2012-ST.
- In the present case, the appellant has chosen the option 7(a) of the Notification No. 30/2012-ST, at the cost of his CENVAT credit on inputs, capital goods and input services, used for providing the taxable service i.e. 100% of the applicable service tax to be paid by the service recipient and hence did not charge any service tax on the face of the invoice raised on the service recipient i.e. M/s. Reliable Autotech Pvt. Ltd. and the service recipient M/s. Reliable Autotech Pvt. Ltd. had paid 100% service tax (i.e. 40% of



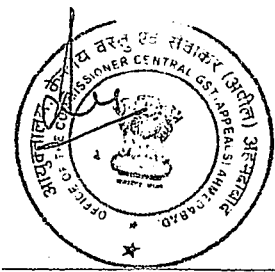
the value of service) and it can be easily proved from the ST-3 returns filed by the said service recipient.

- As the service of renting of motor vehicle itself is under the net of 40% of the value of service tax which the service recipient is liable to pay service tax on RCM, the balance 60% is exempt portion in the hand of service provider as per Section 93(1) of the Finance Act, 1994 and Notification No. 26/2012- Service Tax issued thereunder.
- As the service recipient has paid service tax, the appellant was not required to obtain service tax registration Section 69 of the Finance Act, 1994 and in turn was not required to collect and pay Service Tax.
- Therefore, the demand confirmed by the adjudicating authority under Section 73(1) invoking extended period is also baseless as the appellant is not liable to take service tax registration and pay service tax and hence the question of fraudulent intention does not arise.
- In view of their aforesaid submission, the appellant requested that the impugned order confirming demand of service tax, interest thereon and imposing penalties be quashed and set aside.

4. Personal hearing in the case was held on 06.01.2023. Shri Janak J. Tanna, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He reiterated submission made in appeal memorandum. He further stated that he would submit copies of contract as well as invoices as part of additional written submission.

4.1 Subsequently, the appellant have submitted additional submission on 11.01.2023, wherein they submitted the following documents:

- (i) Copy of invoices issued during the FY 2015-16 & FY 2016-17
- (ii) Form 26AS for the FY 2015-16 & FY 2016-17
- (iii) Certificate dated 08.03.2022 issued by the recipient of services M/s. Reliable Autotech Pvt. Ltd. certifying that they have discharged Service Tax liability as applicable under Reverse Charge Mechanism.
- (v) Undertaking / letter dated 10.01.2023 issued by the recipient of services M/s. Reliable Autotech Pvt. Ltd.
- (iv) Copy of Agreement between the appellant and the recipient of services M/s. Reliable Autotech Pvt. Ltd.
- (v) Calculation of Service Tax paid under RCM by the recipient of services M/s. Reliable Autotech Pvt. Ltd.



5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum & in additional submission dated 11.01.2023 and documents available on record. The issue to be decided in the present case is whether in the impugned order confirming the demand of Service Tax amounting to Rs. 2,99,958/- passed by the adjudicating authority along with interest for the FY 2015-16 & FY 2016-17 and imposing penalties is legal, proper and correct or otherwise.

6. The adjudicating authority had confirmed the demand vide impugned order observing that M/s. Reliable Autotech Private Ltd. had discharged Service tax liability on invoices issued by M/s. Sai Ram Travels under reverse charge mechanism. However, the service tax liability on non-abated value @ 50 % amount are on the appellant as the appellant have not charged amount in invoice @40 % value at abated value but charged full amount of service from the service recipient. The relevant portion of the impugned order is as under:

*"16. .... Thus, it established that, the said notice had earned of Rs. 16,25,025/- and Rs. 18,95,258/- during FY 2015-16 and FY 2016-17 respectively are income for providing taxable service i.e. Rent-a cab to M/s. Reliable Autotech Private Ltd. at, A V 27, Bol Industrial Estate, GIDC-II Sanand, Ahmedabad, Further, the amount charged in their invoice from M/s. Reliable Autotech Private Ltd. is gross value other than abated value provided under Notification No. 26/2012-ST as amended therefore, the tax liability on such gross non abated value is @50 % of gross value on the noticee under Section 68 (1) of the Act and @50% gross value on M/s. Reliable Autotech Private Ltd. under reverse charge Mechanism provided under Section 68 (2) of the Act read with provisions of Sr. No. 7(b) of Notification No. 30/2012, dated 20-6-2012 as amended as mentioned herein above para 15.5 of this order. Whereas vide letter dated. 08.03.2022 issued by M/s. Reliable Autotech Private Ltd. wherein they stated that, they had discharged Service tax liability on invoices issued by M/s. Sai Ram Travels under reverse charge mechanism during the subject period but as per the provisions of Notification No. 30/2012, dated 20-6-2012 the service tax liability on non-abated value @ 50 % amount are on the said noticee as they have not charged amount in invoice @40 % value at abated value but charged full amount of service and therefore service tax liability on 50% amount of gross value of Invoices are upon the said noticee in terms of Sr. No. 7(b) of Notification No. 30/2012, dated 20.06.2012 as amended."*

7. I also find that the main contention of the appellant are that they have chosen the option 7(a) of the Notification No. 30/2012-ST, at the cost of his CENVAT credit on inputs, capital goods and input services, used for providing the taxable service i.e. 100% of the applicable service tax to be paid by the service recipient and hence did not charge any service tax on the face of the invoice raised on the service recipient i.e. M/s. Reliable Autotech Pvt. Ltd. and the service recipient M/s. Reliable Autotech Pvt. Ltd. had paid 100% service tax (i.e. 40% of the value of service) and it can be easily proved from the ST-3 returns filed by the said service



recipient. As the service recipient has paid service tax, the appellant was not required to pay any Service Tax.

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

*Notification No. 26/2012-Service Tax dated 20.06.2012, as amended vide Notification No. 08/2014-ST dated 11.07.2014*

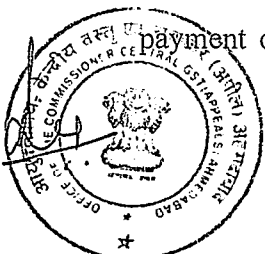
Sl. No.	Description of taxable service	Percentage	Conditions
(1)	(2)	(3)	(4)
9A.	Transport of passengers, with or without accompanied belongings, by – a. a contract carriage other than motor cab. b. a radio taxi c. a stage carriage	40	CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004

*Notification No. 30/2012-Service Tax dated 20.6.2012, as amended vide Notification No. 10/2014-ST dated 11.07.2014*

Table

Sl. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by any person liable for paying service Tax other than the service provider
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%

9. In view of the above provisions of Notification No. 30/2012-ST dated 20.06.2012, I find that there are two options under reverse charge mechanism, viz., (i) if an assessee, who opted for payment of Service Tax on abated value, will issue invoices indicating service tax on abated





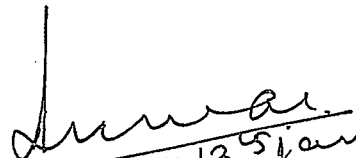
value and in that case if the recipient of service is a Body Corporate, the assessee is not required to pay any service tax and the recipient of service is required to pay service tax on 40% of gross value of Invoice on reverse charge basis; and (ii) if an assessee, who had not opted for payment of Service Tax on abated value, will issue invoices indicating full service tax on non-abated value and in that case if the recipient of service is Body Corporate, the assessee is required to pay service tax on 50% of gross value of Invoice and the recipient of service is required to pay service tax on remaining 50% of gross value of Invoice on reverse charge basis. I find that in the present case, the appellants are not registered with Service Tax department and they had opted for payment of service tax on abated value as per the Notification No. 26/2012-ST dated 20.06.2012. On verification of the invoices issued by the appellant and Form 26AS for the FY 2015-16 & FY 2016-17, I find that the whole amount received by the appellant during both the financial year was received from M/s. Reliable Autotech Pvt. Ltd., a body corporate. On verification of (i) Certificate dated 08.03.2022 issued by M/s. Reliable Autotech Pvt. Ltd. certifying that they have discharged Service Tax liability as applicable under RCM; (ii) Calculation of Service Tax paid under RCM by the recipient of services showing calculation of Service Tax on 40% of gross value of invoices; invoices issued by the appellant during the relevant period and facts that the appellants are not registered with Service Tax department, and therefore, there is no question for availment of Cenvat credit on inputs, capital goods and input services, used for providing the said service, I find that the appellants are eligible for abatement under Notification No. 30/2012-ST dated 20.06.2012, and the appellants have opted for the same and in the present case, the recipient of service is a Body Corporate and paid service tax on 40% of gross value of Invoice on RCM. Therefore, the appellant is not required to pay any service tax.

10. In view of above, I hold that the impugned order passed by the adjudicating authority, confirming demand of Service Tax from the appellant during the FY 2015-16 & FY 2016-17, is not legal and proper and deserves to be set aside. Since the demand of Service Tax fails, there does not arise any question of charging interest or imposing penalties in the case.


11. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

12. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

  
(Akhilesh Kumar) 13 January 2023  
Commissioner (Appeals)

Attested

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



**By RPAD / SPEED POST**

To,

M/s. Dharmendra Parshottamdas Sidhpura,

81, Harekrushna Society,

Nr. Khodiyar Matanu Mandir,

Sanand, Ahmedabad – 382110

Appellant

The Assistant Commissioner,

CGST, Division-III,

Ahmedabad North

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Assistant Commissioner, CGST, Division III, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North

(for uploading the OIA)

5) Guard File

6) PA file

