



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- टेलीफैक्स 07926305136



DIN:20230464SW00004454C9

स्पीड पोस्ट

क फाइल संख्या File No : GAPPL/COM/STP/1812/2022-APPEAL / १०१ - १०६

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-223/2022-23  
दिनांक Date : 31-03-2023 जारी करने की तारीख Date of Issue 12.04.2023

आयुक्त (अपील) द्वारा पारित  
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST/A'bad North/D-VII/ST/DC/159/2021-22  
दिनांक: 14.03.2022, issued by Deputy/Assistant Commissioner, CGST, Division-VII,  
Ahmedabad-North

घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Bipinbhai Jivanlal Patel,  
F-3, Suvarna Apartment, Nr. Nirnaynagar,  
Ranip, Ahmedabad-382480

2. Respondent

The Deputy/ Assistant Commissioner, CGST, Division-VII, Ahmedabad  
North , 4<sup>th</sup> Floor, Shahjanand Arcade, Memnagar, Ahmedabad - 380052

कोई व्यक्ति इस अपील आदेश से अरांतोष 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 :

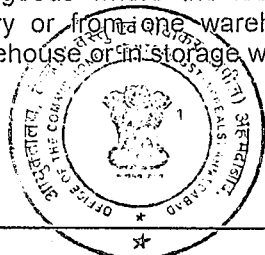
भारत सरकार का पुनरीक्षण आवेदन :  
Revision application to Government of India :

(1) केंद्रीय 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, संराद 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 मामले 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 हों।

(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) केंद्रीय 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) शिद्दोजन 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.

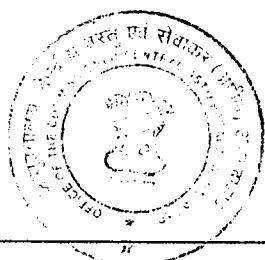
सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केंद्रीय 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, अपीलों के मामले में सीमा शुल्क, केंद्रीय 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.





ORDER-IN-APPEAL

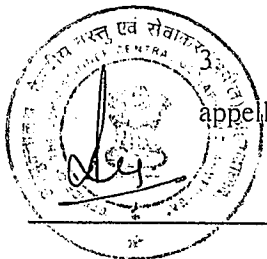
The present appeal has been filed by M/s. Bipinbhai Jivanlal Patel, F-3, Suvarna Apartment, Nr. Nirnaynagar, Ranip, Ahmedabad – 382480 (hereinafter referred to as “the appellant”) against Order-in-Original No. CGST/A’bad North/D-VII/ST/DC/159/2021-22 dated 14.03.2022 (hereinafter referred to as “the impugned order”) passed by the Deputy Commissioner, Central GST, Division VII, 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. ALJPP7494H. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for period FY 2014-15 to FY 2016-17, it was noticed that the appellant had earned an income of Rs. 53,24,710/- during FY 2014-15, Rs. 54,10,520/- during the FY 2015-16 and Rs. 42,56,540/- during the FY 2016-17, which was reflected under the heads “Sales / Gross Receipts from Services (Value from ITR)” or “Total amount paid / credited under Section 194C, 194I, 194H, 194J (Value from Form 26AS)” filed with 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 were called upon to submit copies of Balance Sheet, Profit & Loss accounts, Income Tax Returns, Form 26AS, for the said period. However, the appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant were issued Show Cause Notice No. CGST/AR-V/Div-VII/A’bad North/TPD UR/11/2020-21 dated 26.09.2020 demanding Service Tax amounting to Rs. 20,81,140/- for the period from FY 2014-15 to FY 2016-17, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 77(1)(a), Section 77(1)(c); Section 77(2) & Section 78 of the Finance Act, 1994. The SCN also proposed recovery of un-quantified amount of Service Tax for the period FY 2017-18 (up to Jun-17).

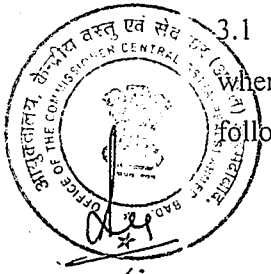
2.2 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 22,82,433/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from 01.04.2014 to 30.06.2017. Further (i) Penalty of Rs. 22,82,433/- 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; (iii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1)(c) of the Finance Act, 1994; and (iv) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994.

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



- The appellant has engaged in providing Tractor and JCB Hiring services on contract basis at residential schemes approved by government development authorities and hence their services were exempted from Service Tax as per Sr. No. 12, 12A, 13 and 14 of the Notification No. 25/2012-ST dated 20.06.2012.
- Service Tax was payable on RCM basis in case of consignor or consignee was covered in specified person as mentioned in Notification No. 35/2004-ST dated 03.12.2004 and accordingly the appellant was not liable to pay Service Tax on charges collected for hiring of tractor for transportation and hence they have not obtained Service Tax Registration.
- As the appellant has provided Tractor and JCB Hiring services to residential scheme approved by the Government which is exempted from levy of service tax as per the Mega Notification and charges collected for transportation of material through Tractor was covered under Reverse Charge Mechanism.
- With such an interpretation they have decided not to collect the service tax and to pay the same as the service was not taxable service under the main provision of the Act. Hence, extended period of Section 73(1) could not be invoke in the present case.
- The adjudicating authority erred in invoking extended period of limitation as appellant has neither charged service tax nor paid service tax on the Tractor and JCB Hiring services to residential schemes approved by government for the reason the same was exempted from levy of Service Tax as per the Mega Notification and Reverse Charge Mechanism.
- On the facts and circumstances of the case and law of the subject, the adjudicating authority has erred in ordering to pay the interest under Section 75 of the Finance Act, 1994.
- On the facts and circumstances of the case and law of the subject, the adjudicating authority has erred in imposing penalty of Rs. 30,000/- under Section 77 of the Finance Act, 1994.
- On the facts and circumstances of the case and law of the subject, the adjudicating authority has erred in imposing penalty of Rs. 22,82,433/- under Section 78 of the Finance Act, 1994.

3.1 The appellant have vide letter dated 06.03.2023 submitted additional written submission, wherein they, inter alia, re-iterated submission made in the appeal memorandum and also made following further submission:



- The appellant is a sub-contractor and is engaged in providing tractor hiring services for transportation of materials used in construction like cement, gravels, sand, etc. during the FY 2014-15 to FY 2016-17.
  - The appellant has provided sub-contracting services in form of tractor hiring services for construction work at various sites. Tractors were used for transportation of sand, cement and other materials used for construction at sites.
  - As per the provisions of Section 66D(p) of the Finance Act, 1994, services provided by way of transportation of goods by road is covered under negative list. In the present case, the appellant has provided tractor hiring services at construction site for transport of materials, which was covered under negative list of service and the appellant is not liable to charge service tax on income earned by them by providing tractor hiring services and with such an interpretation the appellant has decided not to collect the service tax and not to pay the same.
  - Without prejudice to above submission, if the appellant is considered as Goods Transport Agency (GTA), then as per Notification No. 30/2012-ST dated 20.06.2012, the same were covered under reverse charge mechanism and 100% of the tax is payable by the recipient of services, as the appellant has provided the services to the principal contractors which were covered under the list of specified persons.
4. Personal hearing in the case was held on 29.03.2023 through virtual mode. Shri Hardik V. Vora, Advocate, appeared on behalf of the appellant for personal hearing. He reiterated submission made in appeal memorandum as well as in additional written submission.
5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of service tax against the appellant along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise. The demand pertains to the period from FY 2014-15 to FY 2017-18 (upto Jun-2017).
6. I find that in the SCN in question, the demand has been raised for the period FY 2014-15 to FY 2016-17 based on the Income Tax Returns filed by the appellant. Except for the value of "Sales of Services under Sales / Gross Receipts from Services" provided by the Income Tax Department, no other cogent reason or justification is forthcoming from the SCN for raising the demand against the appellant. It is also not specified as to under which category of service the non-levy of service tax is alleged against the appellant. Merely because the appellant had reported receipts from services, the same cannot form the basis for arriving at the conclusion that



the respondent was liable to pay service tax, which was not paid by them. In this regard, I find that CBIC had, vide Instruction dated 26.10.2021, directed that:

*"It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.*

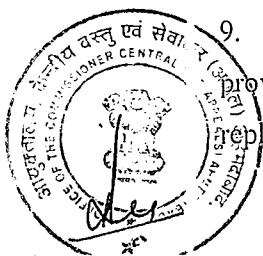
*3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner /Chief Commissioner (s) may devise a suitable mechanism 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."*

6.1 In the present case, I find that letters were issued to the appellant seeking details and documents, which were allegedly not submitted by them. However, without any further inquiry or investigation, the SCN has been issued only on the basis of details received from the Income Tax department, without even specifying the category of service in respect of which service tax is sought to be levied and collected. This, in my considered view, is not a valid ground for raising of demand of service tax.

7. I find that the main contentions of the appellant are that (i) their services were exempted from Service Tax as per Sr. No. 12, 12A, 13 and 14 of the Notification No. 25/2012-ST dated 20.06.2012; (ii) services provided by way of transportation of goods by road is covered under negative list as per the provisions of Section 66D(p) of the Finance Act, 1994 and they are not liable to service tax; (iii) if the appellant is considered as Goods Transport Agency (GTA), then as per Notification No. 30/2012-ST dated 20.06.2012; the same were covered under reverse charge mechanism and 100% of the tax is payable by the recipient of services, as the appellant have provided the services to the principal contractors, which were covered under the list of specified persons; and (iv) the demand is barred by limitation.

8. It is observed that the adjudicating authority has, while confirming the demand of service tax, held that the activity undertaken by the appellant were classifiable under the category of "Supply of Tangible goods for use" defined under Section 65(105)(zzzzj) of the Finance Act, 1994. However, I find that the provisions under Section 65(105) of the Finance Act, 1994 has been replaced by negative list based service tax regime vide Notification No. 20/2012-ST dated 05.06.2012, made applicable w.e.f. 01.07.2012. Hence, the adjudicating authority has confirmed the demand under the provisions prevalent before 01.07.2012, which are not in existence for the period of demand pertaining to FY 2014-15 to 2017-18 (upto Jun-2017). I find that on this count the impugned order passed by the adjudicating authority is not legally correct.

9. The appellant have, in their appeal memorandum, stated that they were engaged in providing Tractor and JCB hiring services on contract basis. However, the appellant, in their reply to the show cause notice, mentioned that they have supplied service of JCB hiring for



residential construction works. During personal hearing before the adjudicating authority also the appellant contended that they own JCB machines and Tractor and they have provided the same to construction site for rent. However, at the appeal stage, the appellant have contended that they have provided services by way of transportation of goods by road, which is covered under negative list as per the provisions of Section 66D(p) of the Finance Act, 1994 and they are not liable to service tax. They have also provided sample invoices issued by them under additional written submission. This plea was not taken by the appellant before the adjudicating authority.

10. On verification of the sample invoices issued by the appellant and submitted along with additional written submission, I find that the appellant engaged in transportation of construction material and issued invoices calculating charges per trip as well as the appellant provided their tractor on hire basis and charged hire charges per hour / per day in the invoices.

10.1. I find that with effect from 01.07.2012, there has been total shift in the service tax levy, from "specific service based taxation" to "negative list based taxation", that means, all the services, except those listed in negative list, shall be liable to service tax. Section 66B of the Finance Act, 1994 provides that there shall be levied a tax to be referred to as service tax on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such a manner as may be prescribed. The 'negative list' is provided for in Section 66D of the Finance Act, 1994.

10.2 The relevant provision of the Section 66E(f) and Section 66D(p) of the Finance Act, 1994, for the purposes of the activity involved in this case, is as follows:

*"Section 66E Declared services. — The following shall constitute declared services, namely:-*

*(f) transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods;"*

*"SECTION 66D. Negative list of services. — The negative list shall comprise of the following services, namely :-*

*(p) services by way of transportation of goods—*

*(i) by road except the services of—*

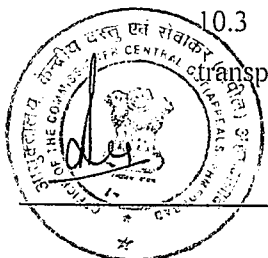
*(A) a goods transportation agency; or*

*(B) a courier agency;"*

*(ii) [ \* \* \* \* ]*

*(iii) by inland waterways;"*

10.3 The services provided by way of transportation of goods by road other than a goods transportation agency or a courier agency falls under the Negative List of Services as per the





Section 66D(p) of the Finance Act, 1994. Also, Section 65B(44) of the Finance Act, 1994, as inserted w.e.f. 1 July, 2012, defines 'service' to mean any activity carried out by any person for another for consideration and includes a declared service but would not include certain services specified in clauses (a), (b) and (c). Declared services have been enumerated in Section 66E of the Finance Act, 1994.

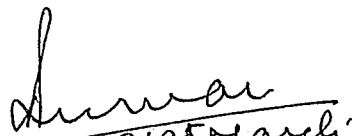
10.4 In view of the above, I am of the considered view that the appellant cannot seek to establish their eligibility for exemption from payment of Service Tax at the appellate stage without first submitting all the evidences before the adjudicating authority. They should have submitted all the invoices and other relevant records & documents before the adjudicating authority, which was proper authority to verify the authenticity of the documents and to recalculate the liability of service tax as enumerated above. They have, at the appellate stage, taken new grounds which were not taken before adjudicating authority. Thus, considering the facts of the case as discussed above and in the interest of natural justice, I am of the considered view that the case is required to be remanded back to the adjudicating authority to decide the matter afresh after examine the contentions of the appellant, backed by the relevant documents, and decide the case accordingly after following principle of natural justice.

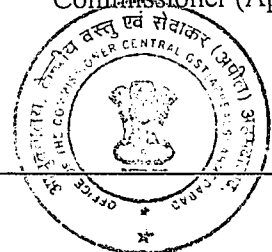
11. I also find that the appellant have also contended that the demand is barred by limitation. In this regard, I find that the due date for filing the ST-3 Returns for the period April, 2014 to September, 2014 was 14<sup>th</sup> November, 2014 (as extended vide Order No. 02/2014-ST dated 24.10.2014). Therefore, considering the last date of which such return was to be filed, I find that the demand for the period April, 2014 to September, 2014 is time barred as the notice was issued on 26.09.2020, beyond the prescribed period of limitation of five years. I, therefore, agree with the contention of the appellant to that extent that even if the suppression is invoked, the demand is time barred in terms of the provisions of Section 73 of the Finance Act, 1994. Therefore, the demand on this count is also not sustainable for the period from April, 2014 to September, 2014 as, the same is barred by limitation. In this regard, I also find that the adjudicating authority has not taken into consideration the issue of limitation and confirmed the demand in toto.

12. In view of the above discussion, I remand the matter back to the adjudicating authority to reconsider the issue a fresh and pass a speaking order after following the principles of natural justice. The appellant are directed to submit all the relevant documents before the adjudicating authority within 15 days.

13. 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.

  
 31st March, 2022  
 (Akhilesh Kumar)  
 Commissioner (Appeals)



Attested

Date : 31.03.2023

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

By RPAD / SPEED POST

To,

M/s. Bipinbhai Jivanlal Patel,  
F-3, Suvarna Apartment,  
Nr. Nirnaynagar, Ranip,  
Ahmedabad – 382480

Appellant

The Deputy Commissioner,  
CGST, Division-VII,  
Ahmedabad North

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Deputy Commissioner, CGST, Division VII, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North  
(for uploading the OIA)

- 5) Guard File
- 6) PA file

