



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: 20221264SW0000444B29

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/706/2022-APPEAL *10133-32*
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-85/2022-23  
दिनांक Date : 19-12-2022 जारी करने की तारीख Date of Issue 20.12.2022  
आयुक्त (अपील) द्वारा पारित  
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. MP/25/Dem/AC/21-22/HNM दिनांक: 24.01.2022,  
issued by Deputy/Assistant Commissioner, Division-II, CGST, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Ajitnath Travels Private Limited,  
A-412, 4<sup>th</sup> Floor, Advance Business Park,  
Opposite Swaminarayan Mandir,  
Sahibaug Road, Ahmedabad-380004

2. Respondent

The Assistant Commissioner, CGST, Division-IV, Ahmedabad North , 3<sup>rd</sup>  
Floor, Sahjanand Arcade, Opp. Helmet Circle, Memnagar, Ahmedabad – 52.

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.

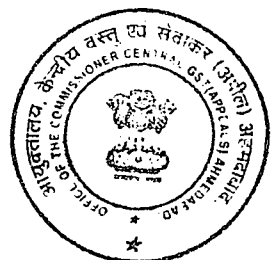
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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(Appel) 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 अनुसूचि-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

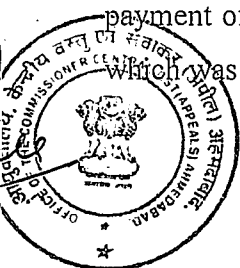
The present appeal has been filed by M/s. Ajitnath Travels Private Limited, A-412, 4<sup>th</sup> Floor, Advance Business Park, Opposite Swaminarayan Mandir, Sahibaug Road, Ahmedabad – 380004 (hereinafter referred to as “the appellant”) against Order-in-Original No. MP/25/Dem/AC/21-22/HNM dated 24.01.2022 (hereinafter referred to as “the impugned order”) passed by the Assistant Commissioner, Central GST, Division II, Ahmedabad North (hereinafter referred to as “the adjudicating authority”).

2.1 Briefly stated, the facts of the case are that the appellant are providing services viz. “Rent-a-Cab Service; Tour Operator Service; Travel Agent for passenger booking (other than Air/Air Travel Agent) Services” and are holding Service Tax Registration No. AANCA8574HSD001. During the course of audit of the financial records of the appellant, for the period from November-2015 to June-2017, by the officers of the Central GST, Audit Commissionerate, Ahmedabad, the following observation was raised in Final Audit Report:

**2.1.1 Non fulfillment of conditions of exemption notification resulting in non-payment or short payment of service tax on services provided to SEZ:** The appellant had provided 3 buses to M/s. Shrinath Travel Agency Pvt. Ltd. ('Shrinath'). They had received a monthly rent for the period from April 2016 to November 2016 for these buses totalling Rs 20,98,500/- (Rs 14,40,000/- (Rent) + Rs 6,58,500/- (RTO Tax). The appellant produced a copy of Form A2 issued in the name of Shrinath for availing the benefit of exemption for services provided to a Unit in the Special Economic Zone ('SEZ'), as per Notification No. 12/2013-ST dated 01.07.2013, as amended. It was observed that Form A2 was issued in the name of Shrinath for providing rent-a-cab services to M/s. ONGC Petro Additions Limited, SEZ Dahej.

2.1.2 The Notification No. 12/2013-ST dated 01.07.2013 envisages the procedure to be followed for not paying the service tax. In the present case, the appellant had not provided the 3 buses directly to the Unit working in the SEZ. It has provided the 3 buses to Shrinath and they in turn have provided the buses to the Unit in the SEZ. The Form A2 has also been issued in the name of Shrinath. Accordingly, Shrinath is the service provider and the SEZ Unit is the service recipient. On this premise, the appellant could not be considered to have provided services to the SEZ Unit and hence, cannot avail the exemption benefit under the Notification No. 12/2013-ST dated 01.07.2013, as amended. The services provided by them is only to Shrinath and they are out of the ambit of Notification No. 12/2013-ST dated 01.07.2013, as amended, for claiming the exemption from payment of service tax. The activity carried out by the appellant falls within the meaning of 'service' as defined under the provisions of Section 65B (44) of the Finance Act, 1994 and the activity of the appellant taxable as defined under Section 65B (51) of the Finance Act, 1994. Thus, the services provided by the appellant are taxable and they are liable for payment of service tax on the income received from Shrinath for the 3 buses provided by them,

which was claimed as exempted under their ST-3 return.

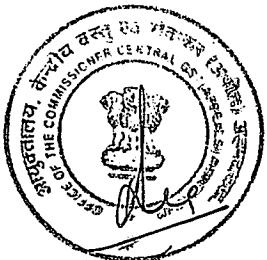


2.2 The appellant under a communication dated 24.12.2019 were asked to clarify on the above objection. The appellant under their letter dated 03.02.2020 have stated that they had provided services to the SEZ Unit through Shrinath and therefore, the exemption was available to them. The Board's Circular No. B.43/7/97-TRU dated 11.07.1997 was also cited to say that service tax was not payable. As already mentioned above, the appellant have provided services to Shrinath and not the SEZ Unit. Further, the Board's Circular dated 11.07.1997 would not be applicable after the negative list regime came into effect from 01.07.2012. Hence, the contentions made by the appellant are not accepted and a SCN bearing No. VI/1(b)-121/C-V/AP-29/2019-20 dated 12.08.2020, was issued to the appellant proposing demand of Service Tax amount of Rs. 2,16,000/- in terms of proviso of Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994 and proposing penalty under Section 78 of the Finance Act, 1994.

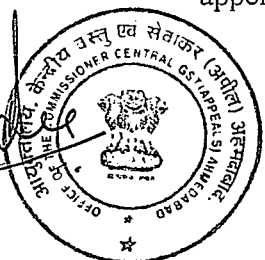
2.3 The said SCN was adjudicated vide impugned order and the demand of Rs. 2,16,000/- proposed in SCN was confirmed under the proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994 and penalty of Rs. 2,16,000/- was also imposed on the appellant under Section 78(1) of the Finance Act, 1994.

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

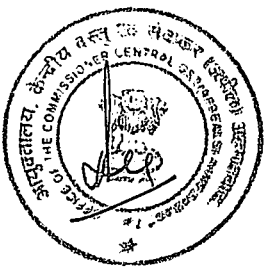
- The appellant are providing services viz. "Rent-a-Cab Service; Tour Operator Service; Travel Agent for passenger booking (other than Air/Air Travel Agent) Services.
- M/s. Shrinath Travel Agency Private Limited has entered into the contract for provisions of service with M/s. ONGC Petro Additions Limited, SEZ (SEZ Unit) and the same has been sub-contracted to the appellant. The appellant had provided 3 buses to M/s. ONGC Petro Additions Limited, SEZ, wherein Form A-2 is issued in the name of M/s. Shrinath Travel Agency Private Limited, who is main contractor.
- The appellant submitted that in the present case, the provision of the service by the appellant and receipt of service in SEZ unit is no where disputed by the Audit officers or in the SCN or in the impugned order.
- As per Notification No. 12/2013-ST dated 01.07.2013, the exemption has been granted to
  - The services on which service tax is leviable under Section 66B of the Finance Act, 1994;
  - Which are received by a unit located in a Special Economic Zone or Developer of SEZ; and
  - Such services are for the authorised operation.



- In the present case, the service provided by the appellant are leviable to tax under Section 66B of the Finance Act, 1994. Further, the buses are provided to SEZ unit by the appellant through Shrinath and the same has been received by the SEZ unit. Further, such services are for authorised operation, as SEZ unit has obtain Form A1, and also issued Form A2 in the name of Shrinath.
- Further, the ab initio exemption is available from levy of service tax to SEZ unit or SEZ developer for the services which are required for authorised operation irrespective of the service provider.
- Further, in the aforesaid notification itself mentioned that in case services received by the SEZ unit or SEZ developer are not exclusively used for authorised operations or found not to have used for authorised operations, SEZ unit or SEZ developer shall be liable to pay service tax claimed as an exemption along with applicable interest, which convey that the exemption to the SEZ unit or SEZ developer for the services received for authorised operations irrespective of the service provider.
- In the present case, the appellant has provided buses to SEZ unit through Shrinath wherein the nature of services is not changed. It is not the case where services provided are altogether different services from the appellant to Shrinath and from Shrinath to SEZ unit. Therefore, the benefit of services provided by the appellant is directly accruing to the SEZ unit as the buses are directly provided to SEZ unit.
- The Notification No. 12/2013-ST grants exemption to services rendered in SEZ unit and does not distinguish between main contractor and sub-contractor. Accordingly, the appellant has rightly claimed the benefit of exemption under the said notification.
- In this regard, they relied on the following judgements:
  - a) Sudhir Chand Jain Vs. CCE, Gahaziabad – 2018 (8) GSTL 302 (Tri.All.)
  - b) Commissioner of Service Tax, Mumbai-I Vs. Fedco Paints and Contracts – 2017 (3) GSTL 364 (Tri.-Mumbai)
  - c) M/s. Shyam Engineers – 2014-TIOL-1622-CESTAT-AHM
  - d) Judgement of Hon'ble Tribunal in case of Sanghvi Motors Vs. CCE Pune-I in Appeal No. ST/89404/2014
- The adjudicating authority has not appreciated the various judgments has not followed the principal of judicial discipline by not appreciating the judgments of various higher forums and simply mentioned in the impugned OIO that the reliance placed by the appellant on various judgments is not relevant in this context.



- Section 26(2) of the SEZ Act provides that Central Government may prescribe, the manner in which, the terms and conditions subject to which the exemption shall be granted under Section 26(1). Government vide Notification No. 12/2013-ST dated 01.07.2013 provides for exemption to the services on which service tax is leviable under Section 66B of the Finance Act, 1944, which are received by SEZ unit and are used for authorized operations from the whole of service tax, education cess and secondary and higher education cess leviable thereon. The ab initio exemption is available from service tax where such services are exclusively used for authorised operations subject to conditions and procedure prescribed therein.
- Further, Section 51 of the SEZ Act provides that SEZ Act would prevail in case of any inconsistency in the provisions contained in any other act applicable for the time being in force.
- The appellant submitted that the SEZ Act is having overriding effect over the Finance Act, 1994 and also cited various case laws for the same. The appellant further submitted that in the instant case, services provided by the appellant are exclusively used for the authorised operation as required under Notification No. 12/2013-ST and is also covered under the approved list of services. Accordingly, services provided by the appellant is eligible for ab initio exemption from levy of service tax and non-furnishing of Form A2 in the name of the appellant cannot be the criteria for denying benefit of exemption.
- The appellant further submitted that in the impugned order disallowing the benefit of exemption to the appellant on the ground that the Form A2 is not in the name of the appellant is not correct as it is a settled law that the substantive benefit cannot be denied for any procedural lapse. In this regard they relied on the below mentioned case laws.
  - a) Suksha International Vs. UOI – 1989 (39) ELT 503 (SC)
  - b) Manglore Chemicals and Fertilizers Ltd. Vs. Dy. Commissioner – 1991 (55) ELT 437 (SC)
  - c) GMR Aerospace Engineering Ltd. Vs. UOI – 2019 (31) GSTL 596 (AP)
- In the present case, the procedure of filling Form A1 and A2 has also been fulfilled by the SEZ unit, however, Form A2 is issued in the name of main contractor i.e. Shrinath, wherein the name of sub-contractor is not included, which is only procedural lapse.
- Without prejudice to above submission and without accepting the liability to pay service tax, the appellant submitted that amount received should be considered as cum-tax as per Section 67(2) of the Finance Act, 1994 and they are required to pay service tax only on the basic amount received considering such amount received as inclusive of tax.



- They have submitted all information to the department at the time of filing service tax return for the respective period, therefore, the extended period for demanding service tax cannot be invoked. They have not indulged in any of the activity as mentioned in proviso to Section 73(1) of the Finance Act, 1994 to justify invocation of extended period of limitation.
- The appellant submitted that it is well settled proposition of law that imposition of penalty is the result of quasi-criminal adjudication. It is not a mechanical process or cannot be imposed just because it is legitimate to levy penalty. The element of mens rea or malafide intention must be necessary present, in order to justify imposition of penalty.
- The appellant submitted that as they are not liable to pay service tax as they have rightly availed the benefit of exemption notification, accordingly, the question of payment of interest does not arise.
- On the basis of above grounds, the appellants requested that the impugned order confirming demand of service tax, interest thereon and imposing penalty be quashed and set aside.

4. Personal hearing in the matter was thereafter held on 02.12.2022. Shri Gopal Krishna Laddha, Chartered Accountant, & Ms. Anjali Bhatia, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submission made in the appeal memorandum. He also submitted copies of various judicial pronouncements during hearing.

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 case is whether the adjudicating authority was correct in denial of the exemption benefit to the appellant on the basis of the fact that the Form A2 in the case was issued by M/s. ONGC Petro Additions Limited, SEZ Dahej in the name of Shrinath for providing rent-a-cab services and not in the name of the appellant and consequentially confirming the demand, in the facts and circumstance of the case is legal and proper or otherwise. The demand pertains to the period from April, 2016 to November, 2016.

6. In order to examine the matter in proper perspective, the relevant portion of the Notification No. 12/2013-ST dated 01.07.2013 is reproduced as under:

*"3. This exemption shall be given effect to in the following manner:*

*(1) The SEZ Unit or the Developer shall get an approval by the Approval Committee of the list of the services as are required for the authorised operations (referred to as the 'specified services' elsewhere in the notification) on which the SEZ Unit or Developer wish to claim exemption from*

*service tax.*





(II) The ab -initio exemption on the specified services received by the SEZ Unit or the Developer and used exclusively for the authorised operation shall be allowed subject to the following procedure and conditions, namely:-

(a) the SEZ Unit or the Developer shall furnish a declaration in Form A-1, verified by the Specified Officer of the SEZ, along with the list of specified services in terms of condition (I);

(b) on the basis of declaration made in Form A-1, an authorisation shall be issued by the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be to the SEZ Unit or the Developer, in Form A-2;

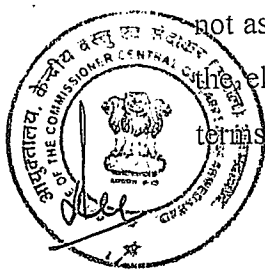
(c) the SEZ Unit or the Developer shall provide a copy of said authorisation to the provider of specified services. On the basis of the said authorisation, the service provider shall provide the specified services to the SEZ Unit or the Developer without payment of service tax;

(d) the SEZ Unit or the Developer shall furnish to the jurisdictional Superintendent of Central Excise a quarterly statement, in Form A-3, furnishing the details of specified services received by it without payment of service tax;

(e) the SEZ Unit or the Developer shall furnish an undertaking, in Form A-1, that in case the specified services on which exemption has been claimed are not exclusively used for authorised operation or were found not to have been used exclusively for authorised operation, it shall pay to the government an amount that is claimed by way of exemption from service tax and cesses along with interest as applicable on delayed payment of service tax under the provisions of the said Act read with the rules made thereunder."

7. In view of the legal provisions above, I find that the Notification No. 12/2013-ST dated 01.07.2013 envisages the procedure to be followed for not paying the service tax. Para 3 (II) of the notification specifically provided that the exemption was subject to the procedure and conditions prescribed therein and Para 3(II)(b) specified the condition that "on the basis of declaration made in Form A-1, an authorisation shall be issued by the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be to the SEZ Unit or the Developer, in Form A-2". Whereas in the present case, the Form A2 has been issued in the name of Shrinath. Accordingly, Shrinath is the service provider and the SEZ Unit is the service recipient. In this background, the appellant cannot be considered to have provided services to the SEZ Unit and hence, cannot avail the exemption benefit under the Notification No. 12/2013-ST dated 01.07.2013, as amended. The services provided by them are only to Shrinath and they are out of the ambit of Notification No. 12/2013-ST dated 01.07.2013, as amended, for claiming the exemption from payment of service tax.

8. I also find that the appellant, in the present case, has claimed the benefit of exemption as provided under the Notification No. 12/2003-ST dated 01.07.2013, being service provider, and not as per the provisions of SEZ Act, 2005 being a unit of SEZ or developer of SEZ. Therefore, the eligibility and admissibility of the exemption claimed has to be examined and decided in terms of the Notification under which it was claimed. There is no scope for an alternative claim



that the exemption claimed was even otherwise admissible as per another/different law or notification. It is settled law that an exemption notification has to be construed in a strict manner and it is for the appellant to prove that they fall within the four corners of the exemption claimed. The Hon'ble Supreme Court, in their decision in the case of Commissioner of Customs (Import), Mumbai Vs. M/s Dilipkumar & Company [2018 (361) E.L.T. 577 (SC)], has settled the legal position in this regard, wherein it was held that "*Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification*". Further, the eligibility/admissibility of the exemption in terms of SEZ Act is not an issue under dispute in the present case. In view thereof, I do not find any merit in the contention raised by the appellant in the case that the issuance of Form A2 in the name of Shrinath is only a procedural lapse and exemption to the appellant cannot be denied on this ground.

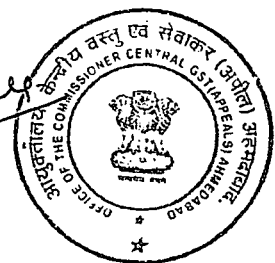
9. I also find that the appellant, in the present case is a DTA service provider and not a unit of SEZ or developer of SEZ and claiming exemption under Notification No. 12/2003-ST dated 01.07.2013 issued under Finance Act, 1994. Thus, their contention that Section 26 & Section 51 of the SEZ Act, 2005 has an overriding effect on other law cannot be legally tenable in their case.

10. I also find that the various case laws relied upon by the appellant is on different footing and, thus, not applied in this case. They are discussed in subsequent paragraphs.

10.1 I find that in the case of Sudhir Chand Jain Vs. CCE, Gahaziabad – 2018 (8) GSTL 302 (Tri.All.), and in the case of Commissioner of Service Tax, Mumbai-I Vs. Fedco Paints and Contracts – 2017 (3) GSTL 364 (Tri.-Mumbai), the dispute was regarding the Notification No. 4/2004-ST and the said notification exempted the service tax subject to three conditions stipulated therein and all the three conditions were satisfied by the claimant. In the present case, the condition as provided in Para 3(II)(b) of the Notification No. 12/2013-ST dated 01.07.2013 was not satisfied by the appellant and, therefore, the said case laws cited by the appellant not applied in the present case.

10.2 Similarly, in the case of M/s. Shyam Engineers – 2014-TIOL-1622-CESTAT-AHM, the order was regarding stay – waiver of pre-deposit and the matter not attained finality, therefore, the said case law does not apply in the present case.

10.3 I also find that in case of Sanghvi Motors Vs. CCE Pune-I in Appeal No. ST/89404/2014, the issue was with regard to the benefit of Notification No. 9/2009-ST and on different footing as the said notification also not stipulate condition, as provided in Para 3(II)(b) of the Notification No. 12/2013-ST dated 01.07.2013, in the present case. The said case law cannot be applied in the present case.

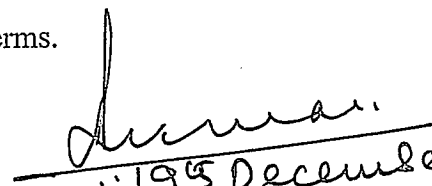


11. Further, in the present case, it clearly transpires that the appellant has intentionally suppressed the correct taxable value by deliberately withholding of essential information from the department though they were knowing that the Form A2 is not issued by a unit of SEZ in their name. They suppressed the said facts with an intent to evade taxes. Also, the appellant has never informed the department about the same and said fact could be unearthed only at the time of Audit of the financial records of the appellant. Therefore, I find that all these acts of willful mis-statement and suppression of facts on the part of the appellant, with an intent to evade payment of Service Tax, are the essential ingredients which exist in the present case which makes them liable to pay the demand raised against them invoking the extended period of limitation under proviso to Section 73(1) of the Finance Act, 1994. When the demand sustains, there is no escape from the liability of interest, hence, the same is, therefore, recoverable under Section 75 of the Finance Act, 1994.


12. As regards penalty imposed under Section 78 of the Act, the Appellant has pleaded that since there was no suppression of facts, no penalty can be imposed upon them under Section 78 of the Act. I have already upheld invocation of extended period of limitation on the grounds of suppression of facts as per discussion in para *supra*. Hence, penalty under Section 78 of the Act is mandatory, as has been held by the Hon'ble Supreme Court in the case of Rajasthan Spinning & Weaving Mills reported as 2009 (238) E.L.T. 3 (S.C.), wherein it is held that when there are ingredients for invoking extended period of limitation for demand of duty, imposition of penalty under Section 11AC is mandatory. The ratio of the said judgment applies to the facts of the present case. I, therefore, hold that the Appellant was liable to penalty under Section 78 of the Act.

13. In view of the above discussion, I uphold the order passed by the adjudicating authority and reject the appeal filed by the appellant.

14. 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.

  
19<sup>th</sup> December,  
(Akhilesh Kumar)  
Commissioner (Appeals) 2022

Attested

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



**By RPAD / SPEED POST**

To,

M/s. Ajitnath Travels Private Limited, A  
-412, 4<sup>th</sup> Floor, Advance Business Park,  
Opposite Swaminarayan Mandir, Sahibaug Road,  
Ahmedabad – 380004

Appellant

The Assistant Commissioner,  
CGST, Division-II,  
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 II, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North

(for uploading the OIA)

- ~~5) Guard File~~
- 6) PA file