



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:20230164SW000000F434

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1261/2022-APPEAL / 6903-07
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-97/2022-23  
दिनांक Date : 29-12-2022 जारी करने की तारीख Date of Issue 02.01.2023  
आयुक्त (अपील) द्वारा पारित  
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 96-97/ADC/GB/2021-22 दिनांक: 23.03.2022, issued by Joint/Additional Commissioner, CGST, Ahmedabad-North
- ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s. Tak Bus Service,  
U/7, Swastik House, Stadium Road, Navrangpura,  
Ahmedabad-380009

2. Respondent

The Joint/Additional Commissioner, CGST, Ahmedabad North , Custom  
House, 1<sup>st</sup> Floor, Navrangpura, Ahmedabad - 380009

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.

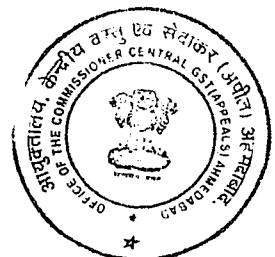
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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.

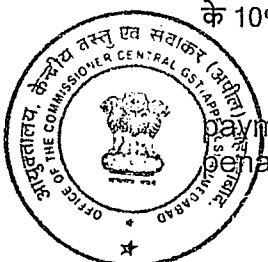
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

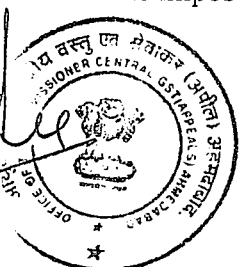
The present appeal has been filed by M/s. Tak Bus Service, U/7, Swastik House, Stadium Road, Navaranpura, Ahmedabad – 380009 (hereinafter referred to as “the appellant”) against Order-in-Original No. 96-97/ADC/GB/2021-22 dated 22.03.2022 (hereinafter referred to as “the impugned order”) passed by the Additional Commissioner, Central GST & Central Excise, Ahmedabad North (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, the facts of the case are that the appellant was holding Service Tax Registration No. AAFT2219GST001. On scrutiny of the data received from the CBDT for the FY 2015-16, it was noticed that there was a difference of value of service amounting to Rs. 4,35,17,999/- during the FY 2015-16, between the gross value of service provided in the said data and the gross value of service shown in Service Tax returns filed by the appellant for the FY 2015-16. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but not paid the applicable service tax thereon. The appellant was called upon to submit clarification for difference along with supporting documents, for the said period, however, the appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant was issued a Show Cause Notice No. STC/15-122/OA/2020 dated 22.10.2020 demanding Service Tax amounting to Rs. 63,10,110/- for the period FY 2015-16, under the provision of Section 73 of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994. The SCN also proposed imposition of penalties under Section 77(1)(c), Section 77(2) & Section 78 of the Finance Act, 1994. The SCN dated 22.10.2020 also proposed recovery of unquantified demand for the period FY 2016-17 & FY 2017-18 (upto Jun-2017) under Section 73 of the Finance Act, 1994.

2.2 Subsequently, another Show Cause Notice No. STC/15-15/OA/2021 dated 23.04.2021 was issued to the appellant demanding Service Tax amounting to Rs. 1,26,20,220/- for the period FY 2015-16, under the provision of Section 73 of the Finance Act, 1994 issued to the appellant. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 77(2) & Section 78 of the Finance Act, 1994.

2.3 Both the Show Cause Notices were adjudicated vide the impugned order passed by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 63,10,110/- was confirmed under Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period FY 2015-16. The adjudicating authority dropped the demand of Service Tax of Rs. 1,26,20,220/-. Further (i) Penalty of Rs. 63,10,110/- 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)(c) of the Finance Act, 1994 and (iii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994.



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

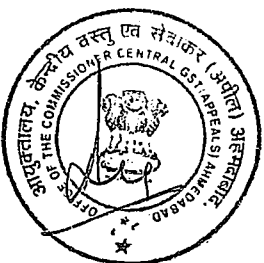
- The appellant are engaged in the business of giving buses on hire to the Ahmedabad Municipal Transport Service (AMTS) being the public authorities and was holding Service Tax Registration AAFT2219GST001 upto April-2013. However, as services were made exempt from levy of service tax, they had surrendered the service tax number online on 30.04.2013. In the surrender application, it is clearly mentioned that reason of surrender is that their services were made exempt w.e.f. 01.07.2012.
- The appellant has provided services of giving vehicles (buses) for public transport to government entities viz. Ahmedabad Municipal Transport Services (AMTS). During the period covered under SCN, they have not provided any other services and not provided any service to anyone other than above stated public transport system. This fact can be verified from Audited Financial Statements, Form 26AS, and invoices, which were submitted by them along with appeal memorandum. They also submitted copy of the contract awarded by AMTS to them in the year 2008, along with extension given during the year 2013.
- They submitted that as per Sr. No. 22(a) of the Notification No. 25/2012-ST, services by way of giving on hire a motor vehicle meant to carry more than twelve passengers to a state transport undertaking is exempted. They also submitted that as per Para 2(zg) of the Notification No. 25/2012-ST, the "state transport undertaking" has the meaning assigned to it in clause (42) of section 2 of the Motor Vehicles Act, 1988. Further, Section 2(42) of the Motor Vehicles Act, 1988 defines "state transport undertaking" as follows:

*"(42) "State transport undertaking" means any undertaking providing road transport service, where such undertaking is carried on by,-*

- (i) *the Central Government or a State Government;*
- (ii) *any Road Transport Corporation established under section 3 of the Road Transport Corporations Act, 1950;*
- (iii) *any municipality or any corporation or company owned or controlled by the Central Government or one or more State Governments, or by the Central Government and one or more State Governments;*
- (iv) *Zilla Parishad or any other similar local authority.*

*Explanation- For the purposes of this clause, "road transport service" means a service of motor vehicles carrying passengers or goods or both by road for hire or reward;"*

- At paragraph 21 of the impugned order, it is mentioned that as the appellant has not submitted contract copy, it is not possible for the adjudicating authority to decide the availability of exemption. Now, they attached copy of contract with the appeal memorandum.



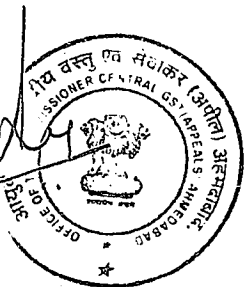
- o In the SCN dated 23.04.2021, it has been mentioned that opportunity for Pre-SCN Consultation was granted on 22.04.2021 but no one appeared. However, the appellant were never granted such opportunity, which is made mandatory by CBIC through Para 5 of the Master Circular No. 1053/2/2017-CX dated 10.03.2017 and as clarified through CBIC Circular No. 1076/02/2020-CX dated 19.11.2020. Thus, issuance of SCN without "Pre SCN Consultation" is invalid and not sustainable. In this regard, the appellant relied on the following case laws:

- a. Amadeus India Pvt. Ltd. Vs. Pr. Comm. of C.Ex., S.T. & Central Tax [2019 (25) GSTL 486 (Del.)]
- b. Tube Investment of India Vs. Union of India [2018 (16) GSTL 376 (Mad.)]
- c. Hitachi Power Europe GMBH Vs. CBIC [2019 (27) GSTL 12 (Mad.)]
- d. Freight Systems (India) Pvt. Ltd. Vs. Comm. of CGST & C.Ex., Chennai [2019 (368) ELT 506 (Mad.)]

- o Order can not be confirmed merely based on SCN which is issued merely on the fact that amount declared in the ITR or Form 26AS are difference than service tax returns or such amounts are not declared in returns filed or returns are not filed. Proper investigation shall be conducted before charging any offence through SCN. The appellant relies on the following judgments.

- (i) M/s. Amrish Rameshchandra Shah Vs. UOI and others [TS-77-HC-2021 Bom-ST]
- (ii) Sharma Fabricators & Erectors Pvt. Ltd. [2017 (5) G.S.T.L. 96 (Tri. - AII.)]
- (iii) Kush Constructions Vs. CGST NACIN [2019 (24) GSTL 606 (Tri.-All.)]
- (iv) Alpa Management Consultants P. Ltd. Vs. CST [2007 (6) S.T.R. 181 (Tri. - Bang.)]
- (v) Tempest Advertising (P) Ltd. Vs. CCE [2007 (5) STR 312 (Tri.-Bang.)]
- (vi) Free Look Outdoor Advertising Vs. CCE [2007 (6) STR 153 (Tri.-Bang.)]
- (vii) Kirloskar Oil Engines Ltd. Vs. CCE [2004 (178) ELT 998 (Tribunal)]
- (viii) Hindalco Industries Vs. CCE [2003 (161) ELT 346 (T)]

- o SCN has been issued by invoking the extended period under Section 73(1) of the Finance Act,1994. However, from the above facts it can well established that the appellant were not liable to pay service tax. Hence, charging suppression and invoking extended period and levying service tax is not valid.
- o On the basis of above grounds, the appellants 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 20.12.2022. Shri Punit Prajapati, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He submitted a copy of appeal preferred by the department before CESTAT, Ahmedabad to support their claim that services provided to AMTS were covered under exemption. He reiterated submission made in appeal memorandum.

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 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 FY 2015-16.

6. I find that in the SCN dated 21.10.2020, the demand has been raised for the period FY 2015-16 based on the "Total Value for TDS (including Section 194C, 194Ia, 194Ib, 194J, 194H)" 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 observed that It is also not specified as to under which category of service, the non-levy of service tax is alleged against the appellant. I also find that another SCN for the same period i.e. FY 2015-16 also issued to the appellant on 23.04.2021 for demanding Service Tax exactly double the amount of the first SCN dated 21.10.2020. I also find that the SCN dated 23.04.2021 is also based on the data provided by the Income Tax Department, without other cogent reason or justification. Merely because the appellant had 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 CBEC 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, two SCNs have been issued for the same period i.e. FY 2015-16 only on the basis of details received from the Income Tax department. I also find that the SCN is question issued on the basis of the difference between the ITR-TDS value as provided by the CBDT and



the taxable value in service tax returns without even specifying the category of service in respect of which service tax is sought to be levied and collected and without proper verification of facts. Hence, such SCNs itself are vague.

7. The adjudicating authority had confirmed the demand vide the impugned order, observing that as the appellant have not produced any documentary evidence to prove that they have provided services to an organization or service receiver which falls under the definition of "State Transport Undertaking". The relevant paras of the impugned order are as under:

*"21. On perusal of reply to SCN filed by the assessee and points discussed during the Personnel hearing, I find that the assessee have claimed that the service provided to Ahmedabad Municipal Corporation is exempted vide Point No. 22 of Notification No. 25/2012-ST dated 20.06.2012 and therefore they are not liable to pay any service tax in this regard. The assessee furnished documents such as audited balance sheet, copy of Form 26AS, ITR and ledger accounts in support of their claim. However, they have not produced any documentary evidence to prove that they have provided services to an organization or service receiver which falls under the definition of "State Transport Undertaking". It is amply clear that to avail the benefit of exemption from payment of service tax by way of any Notification, the assessee is required to submit documentary evidence / proof that they are falling under the exemption notification and also have fulfilled the conditions of availing any exemption notification as provided under Notification.*

*22. In the instant case the assessee failed to furnish / provide the required documents to in support of their claim to prove that they are not liable to pay service tax being the service tax provider. Even during the course of personnel hearing also the assessee failed to submit any documentary evidence to prove that the service receiver i.e. Ahmedabad Municipal Transport Corporation is covered under the definition of "State transport undertaking" as detailed under point no. 22 mentioned under Noti. No. 25/2012 wherein it was described that Services by way of giving on hire to a state transport undertaking is exempted from payment of service tax. ...."*

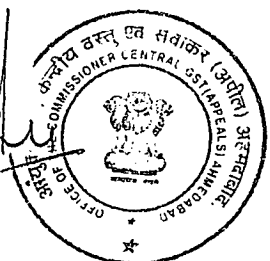
8. For ease of reference, I reproduce the relevant provision for Notification No. 25/2012-ST dated 20.06.2012 and relevant provision of The Motor Vehicles Act, 1988, which reads as under:

**Notification No. 25/2012-ST dated 20.06.2012**

*"22. Services by way of giving on hire –*

*(a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or*

*(b) to a goods transport agency, a means of transportation of goods;"*





“2(zg) “state transport undertaking” has the meaning assigned to it in clause (42) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);”

**Section 2(42) in The Motor Vehicles Act, 1988**

“(42) “State transport undertaking” means any undertaking providing road transport service, where such undertaking is carried on by,—

(i) the Central Government or a State Government;

(ii) any Road Transport Corporation established under section 3 of the Road Transport Corporations Act, 1950 (64 of 1950);

(iii) any municipality or any corporation or company owned or controlled by the Central Government or one or more State Governments, or by the Central Government and one or more State Governments.

(iv) Zila Parishad or any other similar local authority.

Explanation.—For the purposes of this clause, “road transport service” means a service of motor vehicles carrying passengers or goods or both by road for hire or reward;”

8.1 In view of the above, I find that the Ahmedabad Municipal Transport Service (Ahmedabad Municipal Corporation) are providing public / passenger transportation services and the same are ‘State Transport Undertaking’ as the same are fully managed and owned by Ahmedabad Municipal Corporation. On verification of the Work Order dated 29.05.2008 for hiring of CNG operated Buses issued by Ahmedabad Municipal Corporation to the appellant, Agreement dated 16.06.2008 between Ahmedabad Municipal Transport Service (Ahmedabad Municipal Corporation) and the appellant; letter dated 05.10.2013 for extension of agreement issued by Ahmedabad Municipal Corporation and Invoices for the FY 2015-16 issued by the appellant, I find that during the period FY 2015-16, the appellant had earned income from providing services to Ahmedabad Municipal Transport Service (Ahmedabad Municipal Corporation).

8.2 Therefore, I am of the considered view that the services provided by the appellant to the Ahmedabad Municipal Transport Service (Ahmedabad Municipal Corporation) during the relevant period were covered under the Sr. No. 22 of the Notification No. 25/2012-ST dated 20.06.2012, read with definition of “state transport undertaking” as provided under Para2 (zg) of the Notification No. 25/2012-ST dated 20.06.2012 read with the definition of motor vehicle as provided under Section 2(42) of the Motor Vehicles Act, 1988. Hence, I find that the service provided by the appellant during the FY 2015-16 is exempted and the appellant was not liable to pay Service Tax of Rs. 63,10,110/- as confirmed by the adjudicating authority under impugned order, for providing such services during the FY 2015-16.

8.3 I also find that the similar view has been taken in Order-in-Original No. AHM-EXCUS-002-COMMR-13 & 14-2022-23 dated 13.07.2022 passed by the Commissioner, Central GST & Central Excise, Ahmedabad North Commissionerate in the case of M/s. Mateshwari Travels, under which the party was providing similar services to the Ahmedabad Municipal Transport



Service (Ahmedabad Municipal Corporation) and Rajkot Rajpath Ltd. and the demand was dropped under said OIO dated 13.07.2022. Also, the department while review of the said OIO, filed an appeal before the Hon'ble CESTAT, Ahmedabad against the dropping of demand in respect of Service provided by the party to Rajkot Rajpath Ltd. only.

9. In view of above, I hold that the impugned order passed by the adjudicating authority, confirming demand of Service Tax amounting to Rs. 63,10,110/-, is not legal and proper and deserves to be set aside. Since the demand of Service Tax is not sustainable on merits, there does not arise any question of charging interest or imposing penalty in the case.

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


11. 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*  
29<sup>th</sup> December, 2022  
(Akhilesh Kumar)  
Commissioner (Appeals)

Attested

Date : 29.12.2022

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

**By RPAD / SPEED POST**

To,  
M/s. Tak Bus Service,  
U/7, Swastik House,  
Stadium Road, Navaranpura,  
Ahmedabad – 380009

The Additional Commissioner,  
CGST & Central Excise,  
Ahmedabad North



Appellant

Respondent

Copy to :

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

- 5) Guard File
- 6) PA file