



सत्यमेव जयते

## आयुक्त का कार्यालय, (अपीलस)

Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

☎: 079-26305065

☎: 079 - 26305136



क फाइल संख्या : File No : **V2(ST)152 /North/Appeals/2018-19 9920 to 9924** 28.03.2019

ख अपील आदेश संख्या : Order-In-Appeal No.. **AHM-EXCUS-002-APP-194-18-19**

दिनांक Date : **28/02/2019** जारी करने की तारीख Date of Issue \_\_\_\_\_

**श्री उमा शंकर**, आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals)

ग Arising out of Order-in-OriginalNo**01/AC/D/BJM/2018-19** Dated **26/04/2018**

Issued by **Assistant Commissioner** , Central GST , Div-III , Ahmedabad North.

घ अपीलकर्ता का नाम एवं पता

**Name & Address of The Appellants**

### M/s Pratham Hundai

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-

Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-

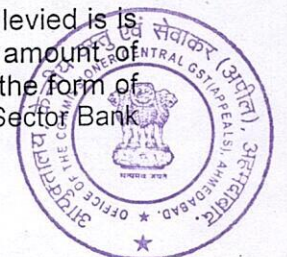
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैनटल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad - 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (1) के अंतर्गत निर्धारित फार्म एस.टी.- 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompany ed by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.



(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (OIA) (उसमें से प्रमाणित प्रति होगी) और 'अपर

आयुक्त, सहायक / उप आयुक्त अथवा अधीक्षक केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. / Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjudication authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय (संख्या-2) अधिनियम 2014 (2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल हैं -

(i) धारा 11 डी के अंतर्गत निर्धारित रकम

(ii) सेनवैट जमा की ली गई गलत राशि

(iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

⇒ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।

4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

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.

⇒ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

4(1) इस संदर्भ में, 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।

4(1) 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.

रजिस्टर्ड डाक ए.डी. द्वारा



दूरभाष : 26305065

**ORDER-IN-APPEAL**

This appeal has been filed by M/s. Pratham Hyundai (Pratham Cars Pvt. Ltd.), Plot No. 11, 12, 13, 14, Opp. Reliance Petrol Pump, Sanand ITI College, Sanand Viramgam Highway, Tal: Sanand, Ahmedabad (hereinafter referred to as "*the appellants*") against the Order-in-Original number 01/AC/D/BJM/2018-19 dated 26.04.2018 (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. Brief facts of the case are that the appellants were holding Service Tax Registration number AAGCP4022JSD001 under Business Auxiliary Service, Repair and Reconditioning, Restoration or Decoration or any other service of any motor vehicle. On the basis of prior information, it was learnt that the said appellants were collecting charges from their various customers for obtaining temporary license, providing insurance facilities, securing extended warranty, bringing vehicles from godown stock yard to showroom or at times delivering vehicles at the customer's doorstep to ensure hassle free delivery of the vehicles, in the name of handing facilitation logistics charges but not shown in their ST-3 returns. Thus, inquiry against the said appellants was conducted and they were asked to submit related documents. During scrutiny of all the documents, several ambiguities were noticed and therefore, a show cause notice, dated 11.10.2017, was issued to the appellants.

3. The said show cause notice was adjudicated by the adjudicating authority vide the impugned order. The adjudicating authority, vide the impugned order, confirmed the demand of Service Tax amounting to ₹ 17,54,121/- under Section 73(2) of the Finance Act, 1994. He also ordered for the recovery of interest at appropriate rate under Section 75 of the Finance Act, 1994. The adjudicating authority further imposed penalties of ₹ 10,000/- and ₹ 11,13,068/- ( ₹ 6,41,055/- for the period 01.07.2012 to 30.05.2015 + ₹ 4,72,013/- for the period 01.06.2015 to 31.03.2016) under Sections 77(2) and 78(1) respectively of the Finance Act, 1994.

4. Being aggrieved, the appellants have filed the present appeal before me. The appellants pleaded that the impugned order was passed in ignorance and/or without fully appreciative of the facts relevant to the case and contrary to the applicable legal provisions. They argued that to attract maximum customers, many ancillary facilities are provided to them. The cost of which is embedded in the sales price of the car and proper VAT is discharged on the sales value including handling charges which are collected from the customers. They further argued that handling charges are collected which include services for the maintenance of the car purchased and stored in their godowns/ stock yards. These are also parts of the cost of their sales

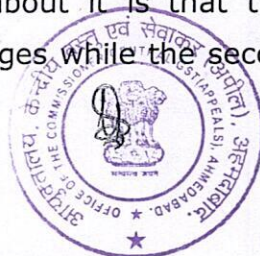


and the maintenance of the car is only for themselves and not for any other person. They further argued that the handling charges collected on sale of goods is the valuation issue for Central Excise and Commercial Tax department and not for the Service Tax. They further stated that the transaction between them and the car manufacturer is on principle to principle basis.


5. A personal hearing in the matter was held on 13.12.2018 and Shri Pravin Dhandheria, Chartered Accountant, appeared before me and reiterated the contents of the grounds of appeal.

6. I have carefully gone through the facts of the case on records, appeal memorandum and submissions made by the appellants at the time of personal hearing. At the very beginning, I find that the appellants have filed the appeal quite late. The impugned order was actually issued on 26.04.2018 but the appellants have filed the appeal on 06.11.2018; which shows that they are delayed by nearly 264 days. However, the appellants have claimed to receive the appeal on 12.09.2018, and in support of their claim, they have submitted a photocopy of their inward register which shows that they have actually received the letter on 12.09.2018. Moreover, the appellants have submitted postal acknowledgement which also supports their claim. Looking to the above mentioned supporting documents, I am quite convinced that the appellants have actually received the impugned order on 12.09.2018 and thus accept the plea of the appellants that they have filed the appeal on time.

7. Going through the documents, submitted by the appellants, I find that they have claimed that whatever additional services provided by them during the process of sale of car, the cost of all those services has been embedded in the sale price of the car and proper VAT is discharged on the sale value including handling charges (which are being collected from their customers on sale of the car). The appellants have quoted Master Circular number 96/7/2007-ST dated 23.08.2007 and I too agree with the said circular that Service Tax is not leviable on the transaction where Sales Tax/VAT has been paid. The appellants have further tabled before me the judgment delivered by the Apex Court in the case of Union of India and others vs. Bombay Tyre International Ltd. Also, in the case of Sudarshan Motors vs. CCE Nagpur, the Hon'ble Court has held that if a transaction involves both sale and also services, the value of the goods should be excluded if sales tax/VAT has been discharged. Now, while going through the impugned order, I find that the appellants issued two invoices, and collected amount for the same, while selling the cars; one was for the vehicle sale and the other was for the handling charges. Now, the interesting fact about it is that the car sale invoice covers the cost of vehicle and VAT charges while the second invoice,



a debit note, pertains to the handling charges. The said debit notes are charged separately over and above the invoices of the car sales. It is very much pertinent to point out that the amount charged through the debit notes is not included in the actual cost of the car. However, the appellants have repeatedly pleaded that the handling charges are included in the actual cost and are VAT paid and in support of their claim, they have submitted before me three sets of invoices pertaining to different periods and customers. Going through the said invoices, I find that one invoice pertains to sale of the car and the other is related to handling charges. Both the invoices indicate that VAT is discharged on the sale value. For better clarification, I produce below, scanned copy of two invoices issued to a single customer on the same day;



## PRATHAM CARS PVT. LTD.

Opp. Reliance Petrol Pump, Opp. Sanand ITI,  
Sanand-Viramgam Highway, Sanand, Ahmedabad - 382 110  
E-mail - prathamhyundai@gmail.com

### INVOICE

<p><b>PRATHAM CARS PRIVATE LIMITED.</b> PLOT NO. 11, 12, 13 GIDC OPP RELIANCE PETROL PUMP, SANAND-VIRAMGAM HIGHWAY, SANAND - 382110. E-Mail : prathamhyundai@gmail.com Buyer</p> <p><b>DINESHKUMAR KHIMJIBHAI SINDHAV</b> 6520, 165 SAHAJANAND NAGAR, MANDVI - KUTCH VILLAGE : MANDAVI DIST : KUTCHHH</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>Invoice No.</td> <td>Dated</td> </tr> <tr> <td>PCPL/5028/2015-16</td> <td>24-Jan-2016</td> </tr> <tr> <td>Delivery Note</td> <td>Mode/Terms of Payment</td> </tr> <tr> <td>Supplier's Ref.</td> <td>Other Reference(s)</td> </tr> <tr> <td>Buyer's Order No.</td> <td>Dated</td> </tr> <tr> <td>Despatch Document No.</td> <td>Delivery Note Date</td> </tr> <tr> <td>Despatched through</td> <td>Destination</td> </tr> <tr> <td colspan="2">Terms of Delivery</td> </tr> </table>	Invoice No.	Dated	PCPL/5028/2015-16	24-Jan-2016	Delivery Note	Mode/Terms of Payment	Supplier's Ref.	Other Reference(s)	Buyer's Order No.	Dated	Despatch Document No.	Delivery Note Date	Despatched through	Destination	Terms of Delivery	
Invoice No.	Dated																
PCPL/5028/2015-16	24-Jan-2016																
Delivery Note	Mode/Terms of Payment																
Supplier's Ref.	Other Reference(s)																
Buyer's Order No.	Dated																
Despatch Document No.	Delivery Note Date																
Despatched through	Destination																
Terms of Delivery																	

Sl No.	Description of Goods	Quantity	Rate	per	Amount
1	GRAND I10 SPORTZ 1.2 - 339574 WHITE	1 NO.	4,17,596.52	NO.	4,17,596.52
	VAT OUTPUT A/C 12.5 [ VEH ]		12.50 %		52,199.57
	ADDITIONAL VAT 2.5 (O) VEH		2.50 %		10,439.91
<b>Total</b>		<b>1 NO.</b>			<b>₹ 4,80,236.00</b>


E & O.E

Amount Chargeable (in words)  
Indian Rupees Four Lakh Eighty Thousand Two Hundred Thirty Six Only

Remarks:  
CHS NO. MALA851CLFM339574, ENG NO.  
G4LAFM803104, GRAND I10 SPORTZ 1.2 - 339574  
WHITE, RFD NO. 5028


Company's VAT TIN : 24074601815 28/03/2012  
Company's CST No. : 24574601815 28/03/2012  
Company's PAN : AAGCP4022J


for PRATHAM CARS PRIVATE LIMITED



We declare that this invoice shows the actual price of the goods described and that all particulars are true and correct.

This is a Computer Generated Invoice





## PRATHAM CARS PVT. LTD.

Opp. Reliance Petrol Pump, Opp. Sanand ITI,  
Sanand-Virangam Highway, Sanand, Ahmedabad - 382 110  
E-mail - prathamhyundai@gmail.com

### INVOICE


<b>PRATHAM CARS PRIVATE LIMITED</b> PLOT NO. 11, 12, 13 GIDC OPP RELIANCE PETROL PUMP, SANAND-VIRANGAM HIGHWAY, SANAND - 382110. E-Mail : prathamhyundai@gmail.com Buyer <b>DINESHKUMAR KHIMJIBHAI SINDHAV</b> 8520, 165 SAHAJANAND NAGAR, MANDVI - KUTCH VILLAGE : MANDAVI DIST : KUTCHHH	Invoice No. <b>PCPL/5028</b> Delivery Note	Dated <b>24-Jan-2016</b> Mode/Terms of Payment  Other Reference(s)  Dated  Delivery Note Date  Destination  Terms of Delivery
Supplier's Ref. <b>PCPL/5028</b> Buyer's Order No.	Despatch Document No.  Despatched through  Terms of Delivery	

Sl No.	Particulars	Quantity	Rate	per	Amount
1	SALES (HANDLING)				5,217.39
2	VAT OUTPUT A/C 12.5 [ VEH ]		12.50 %		652.17
3	ADDITIONAL VAT 2.5 (O) VEH		2.50 %		130.43
4	ROUND OFF				0.01
<b>Total</b>					<b>₹ 6,000.00</b> E. & O.E

Amount Chargeable (in words)  
Indian Rupees Six Thousand Only

Company's VAT TIN : 24074601815 28/03/2012  
 Company's CST No. : 24574601815 28/03/2012  
 Company's PAN : AAGCP4022J

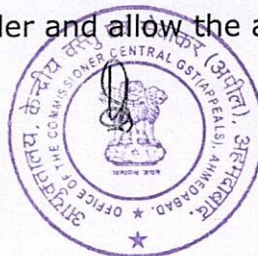
for PRATHAM CARS PRIVATE LIMITED



This is a Computer Generated Invoice

Thus, looking above, I find that the appellants have paid VAT in both the cases and as per Master Circular number 96/7/2007-ST dated 23.08.2007, Service Tax is not leviable on the transaction where Sales Tax/VAT has been paid. It seems that the adjudicating authority has failed to look into the matter and jumped to the conclusion on the basis of allegation only; as nowhere in the impugned order, I could find any statement to counter the argument of the appellants regarding payment of VAT in the second invoice/debit note. Thus, without an iota of doubt, I conclude that the said second invoice is included in the total cost of the vehicle and VAT has been rightly paid on it.

8. In view of the above, as per my above discussions and findings held in paragraph 7, I set aside the impugned order and allow the appeal filed by the appellants.



9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
9. The appeals filed by the appellant stand disposed off in above terms.

*उमा शंकर*

(उमा शंकर)

CENTRAL TAX (Appeals),

AHMEDABAD.

ATTESTED

*S. Dutta*  
(S. DUTTA) 270219

SUPERINTENDENT,  
CENTRAL TAX (APPEALS),  
AHMEDABAD.



To,  
M/s. Pratham Hyundai (Pratham Cars Pvt. Ltd.),  
Plot No. 11, 12, 13, 14, Opp. Reliance Petrol Pump, Sanand ITI College,  
Sanand Viramgam Highway,  
Sanand,

**Copy to:-**

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Commissioner, Central Tax, Ahmedabad-North.
3. The Dy. / Asstt. Commissioner, Central Tax, Div-III, Ahmedabad-North.
4. The Asstt. Commissioner, Central Tax (System), HQ, Ahmedabad-North.
- ✓ 5. Guard file.
6. P.A file.



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