



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.

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क फाइल संख्या : File No : V2(ST)73/North/Appeals/2019-20 / 13034 To 13038

ख अपील आदेश संख्या : Order-In-Appeal No.. AHM-EXCUS-002-APP- 105 -19-20

दिनांक Date : 15/11/2019 जारी करने की तारीख Date of Issue 25/11/2019

श्री गोपी नाथ, आयुक्त (अपील) द्वारा पारित

Passed by Shri Gopi Nath Commissioner (Appeals)

ग Arising out of Order-in-Original No. 02/ADC/2019-20/MSC Dated 10/05/2019

Issued by **Additional Commissioner** , Central GST , Div-I , Ahmedabad North.

घ अपीलकर्ता का नाम एवं पता

Name & Address of The Appellants

### M/s Uday Autolink Pvt. Ltd

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 मैन्टल 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 और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और 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 फॉर्म 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, 1994 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 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 रुपए से अधिक न हो

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

- (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 होंगे।

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.

By Speed Post

दूरभाष : 26305065



**ORDER-IN-APPEAL**

This appeal has been filed by M/s. Uday Autolink Pvt. Ltd., F-14, Galaxy Complex, Opp. Galaxy Cinema, Naroda, Ahmedabad-382 330 (for short "appellant") against Order-In-Original No.02/ADC/2019-20/MSC dated 10.05.2019 (for short "impugned order") passed by the Additional Commissioner of CGST & Central Excise, Ahmedabad North Comm'rate (for short "adjudicating authority").

2(i). The facts of the case in brief are that the appellant is a dealer for sale & service of Maruti Suzuki brand cars. The appellant is holding Service Tax Registration for providing taxable service. On the basis of stop filers data, an intelligence was developed and premises of the appellant was visited by officers of Service Tax Comm'rate, Ahmedabad on 24.08.2015. It was found that the appellant did not pay the service tax amount for the period from June-2014 to July-2015 and did not file the required Service Tax returns for the period from April-2014 to March-2015. It was found that there was non-payment of service tax towards the Repair and Maintenance Service and Business Auxiliary Service. It was further found that the appellant was collecting the handling charges from the customers on sale of the vehicle. Statements of Shri Hirenkumar P. Trivedi, CFO and Shri Saurabh R. Shah, Accounts Manager of the appellant were recorded wherein it was submitted that the handling charges were collected towards transportation, loading-unloading of the vehicle from stockyard to showroom and vice-versa and the said amount was a part of sale-price of the vehicle. It has also been stated in the statement that the VAT has been paid on such handling charges and as per their understanding no service tax is payable on such handling charges as they were not providing any service to the customers. Vide their letter dated 28.02.2018 the appellant submitted that they had stopped collecting handling charges from customers from September-2015 onwards. This ended up into issuance of Show Cause Notice dated 12.04.2018 (for short "SCN") issued by the Joint Commissioner of CGST and Central Excise, Ahmedabad North Comm'rate proposing (i) demand of service tax pertaining to (a) Repair, reconditioning, restoration or decoration or any other similar service of any motor vehicle, (b) Business Auxiliary Service (c) Manpower Supply Service (under RCM) as detailed in the Annexure-A to the SCN and demand of service tax amounting Rs.35,72,922/- on the handling charges collected by the appellant from the customers as detailed in Annexure-B to the SCN under Section 73(1) of the Finance Act, 1994 by invoking extended period alongwith interest under Section 75 of the Finance Act, 1994 (ii) Recovery of late fee under Section 70 of the Finance Act, 1994 and (iii) imposition of Penalties under Section 77 and 78(1) of the Finance Act, 1994.

A

2(ii). In the impugned order, the adjudicating authority confirmed the demand alongwith interests, recovery of late fee, and also confirmed imposition of penalty as proposed under the SCN. The appellant paid the amount of service tax as shown under Annexure-A (i.e.



pertaining to the service (a) Repair, reconditioning, restoration or decoration or any other similar service of any motor vehicle, (b) Business Auxiliary Service and (c) Manpower Supply Service) to the SCN alongwith interest and also paid the penalty voluntarily. However the appellants were not satisfied with the demand of service tax on the handling charges collected by them from the customers.

3. Thus the appellants preferred an appeal against such demand of service tax on handling charges on the following grounds :

- (a) that their stockyard & showroom are located at different places and they transfer motor vehicle from stockyard to showroom as and when required and charge 'handling charges' from the customers which are towards handling of vehicles before the sale and delivery;
- (b) that they are paying VAT/Sales Tax on such handling charges and a certificate dated 20.02.2019 issued by M/s. Patel Consultax and duly signed by Shri Diwakar Patel, Advocate clearly reveals that the VAT has been paid on the handling charges for the F.Y. 2012-13, 2013-14, 2014-15 and 2015-16;
- (c) that any charges collected for pre-delivery of goods forms part of "Sale Price" and hence it is trading of goods which is covered under negative list under clause (e) of the Section 66D as "Trading of Goods" and they are trading in motor vehicles i.e. cars;
- (d) the Section 2(24) of the Gujarat Value Added Tax, 2003 "sale price" means the amount of valuable consideration paid or payable to a dealer or received or receivable by a dealer for any sale of goods made including the amount of duties levied or leviable under the Central Excise Tariff Act, 1985 or the Customs Act, 1962 and any sum charged for anything done by the dealer in respect of the goods at the time of or before delivery thereof and includes....
- (e) that the above definition clearly states that anything done by the seller of goods at the time of or before delivery of goods shall be included in the selling price and would be subjected to VAT and thus the handling charges will become part of sale price and would be subjected to VAT and not service tax;
- (f) that CBEC in the Circular No.96/7/2007-ST dated 23.08.2007 has clarified that the service tax is not leviable on a transaction treated as sale of goods and subjected to levy of sale tax/VAT; that this circular also stated that the payment of VAT/sales tax on a transaction indicates that the said transaction is treated as sale of goods;
- (g) that Circular No.699/15/2003-CX dated 05.03.2003 states that any activity of sales dealer at the pre-sale stage or at the time of sale will not come under the purview of service tax;
- (h) that the handling charges collected by them are in the nature of pre-delivery charges i.e. before sale and delivery of the vehicle;
- (i) that they rely on the judgement in the case law of M/s. Automotive Manufacturers Pvt. Ltd. v/s. CCE, Nagpur reported in 2015(38)STR 1191 (Tri-Mum.) which states that the handling charges incurred in connection with procurement of parts would form part of value of goods subsequently sold and any consideration received for supply of goods would not be covered within the scope of Section 67 i.e. valuation of taxable service for charging service tax; that they further rely on the judgement of Hon'ble Supreme Court in case of M/s. India Meters Ltd. v/s. State of Tamilnadu;
- (j) that there is no suppression as their records were earlier audited upto March-2014 and Audit Report issued on 20.03.2015 did not deal with the handling charges issue therefore they were under bonafide belief that handling charges was not subject to service tax;
- (k) that the circulars and case laws clearly indicates that taxability of handling charges are subject matter in so many cases and thus question of interpretation is involved and charge of suppression is out of question and extended period can not be invoked;



(1) that proviso to Section 78(1) states that the penalty would be maximum 50% of the service tax where details relating to such transactions are recorded in the specified records for the period beginning with 8<sup>th</sup> April, 2011 upto the date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive).

4. Hearing in this case was held on 10.10.2019 wherein Shri Punit Prajapati, Chartered Accountant represented the appellant and reiterated the submission of the appeal memo, explained the case in details and requested to allow the appeal.

5. I have carefully gone through the facts of the case, grounds of appeal in the appeal memorandum and the various plea putforth in the appeal memorandum and during personal hearing. The appellant has preferred this appeal against the demand of service tax on handling charges, charging of interest over such service tax amount and imposition of penalty due to the demand of service tax in respect of handling charges. Therefore, the issue to be decided in the present case is whether the handling charges are part of sale price liable to VAT or to be treated as service charges liable to service tax.

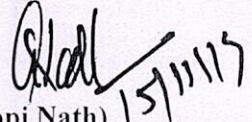
6. The facts of the case reveal that the appellant is selling cars to the buyers and also carrying out services of the cars. They receive the cars from the car manufacturer and incur some expenses towards transportation, loading-unloading of the vehicle from stockyard to showroom and vice-versa and then collect some charges towards it from the buyer when the buyer buy the car. Thus, I find that the activity of the appellant is a pre-sale activity. I did not find any service in this activity of the appellant and they even collect these charges at the time of sale. M/s. Patel Consultax, who has conducted the VAT audit of the appellant, has also issued a certificate dated 20.02.2019 regarding payment of VAT on the handling charges collected by the appellant for the period under dispute. Service Tax is chargeable on the service only and not on the sale of goods/vehicle as it falls under the purview of VAT. Thus, once the activity of the appellant is considered as sale, the same can not be considered as service. Whether the VAT on such sale has been paid or not, will not make the activity of the appellant to be considered as service. So the question of demand of service tax on such charges does not arise.

7. I further find that the CBEC in the Circular No.96/7/2007-ST dated 23.08.2007 has clarified that the service tax is not leviable on a transaction treated as sale of goods and subjected to levy of sale tax/VAT. The same circular also stated that the payment of VAT/sales tax on a transaction indicates that the said transaction is treated as sale of goods. Circular No.699/15/2003-CX dated 05.03.2003 of the CBEC, in its last para made it clear that any activity of sales dealer at the pre-sale stage or at the time of sale will not come under the purview of service tax. After this, there is no ambiguity in deciding that the activity of the appellant does not come under the purview of service. When the activity of appellant is not



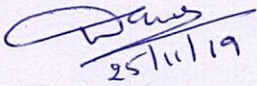
treated as service, the question of any levy of service tax on such activity does not arise. I therefore set aside the impugned order in respect of demand of service tax on handling charges. Since the demand has been set aside, the question of charging interest on such demand and imposition of penalty under Section 78 of the Finance Act, 1994 does not arise.

8. I view of above findings, I allow the appeal filed by the appellant and the same stands disposed off in above terms.

  
( Gopi Nath) 15/11/19  
Commissioner (Appeals)

Date: .11.2019

Attested

  
25/11/19

(Jitendra Dave)  
Superintendent (Appeal)  
CGST, Ahmedabad.



**BY R.P.A.D. / SPEED POST TO :**

M/s. Uday Autolink Pvt. Ltd.,  
F-14, Galaxy Complex, Opp. Galaxy Cinema,  
Naroda, Ahmedabad-382 330

**Copy to :-**

1. The Principal Chief Commissioner, CGST & Central Excise, Ahmedabad Zone.
2. The Commissioner, CGST & Central Excise, Ahmedabad North Comm'rate.
3. The Addl./Joint Commissioner, (Systems), CGST & Cen. Excise, Ahmedabad North Comm'rate.
4. The Dy. / Asstt. Commissioner, CGST & Cen. Excise, Division-I, Ahmedabad North Comm'rate.
5. Guard file.
6. P.A. File.