



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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स्पीड पोस्ट

- क फाइल संख्या : File No : V2(ST)25/North/Appeals/2019-20 /16264 TO 16269
ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-29 & 30 /20-21
दिनांक Date : 26.10.2020 जारी करने की तारीख Date of Issue 12/11/2020
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
ग Arising out of Order-in-Original No. Div 05-06/ADC/2019/MSC दिनांक: 28.02.2019, issued by
Additional Commissioner Central GST & Central Excise, Ahmedabad-North
घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s Gujarat State Road Transport Corporation(GSRTC),
Central Office, S.T. Central Workshop, Naroda,
Ahmedabad-382346.

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
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।
(ii) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit
Ministry of Finance, Department of Revenue, 4th 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd 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 Appellate 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 अनुसूची-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.

- (6) 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% रूप 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 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

M/s. Gujarat State Road Transport Corporation, Central Office, S.T Central workshop, Naroda, Ahmedabad-382346, for short 'GSRTC' (hereinafter referred to as 'appellant') have filed the present appeal against the Order-in-Original No. 05-06/ADC/2019/MSC dated 28.02.2019/08.03.2019 (hereinafter referred to as 'impugned order') passed by the Additional Commissioner, CGST, Ahmedabad-North (hereinafter referred to as 'adjudicating authority'). They are engaged in providing various services like sale of space or time for Advertisement Service, Business Support Service etc and were having Service tax Registration NoAAACG55887HST001.

2. The facts of the case, in brief, are that during the course of audit of the record of the appellant for the period 2009 to 2013-14 by officers of Principal Director of Audit (Central) CERA, it was observed that they had entered into contract on 24.05.2007 with M/s. Sai Marketing & Trading Company for transportation of parcels, allied services and operation of courier services through their buses for a period of three years (2007-08 to 2009-10). As per said contract, M/s. GSRTC was required to provide space in their buses for transport of courier packages/goods and also provide necessary covered space for running booking office in designated bus station premises depending on availability and convenience of the Corporation. M/s. Sai Marketing & Trading Company was required to pay monthly installment to GSRTC against receipt of such service. GSRTC was paying service tax under the category "Courier Agency Service" upto 31.05.2008.

2.1 However, after receipt of clarification from Director (Service Tax) vide letter F.No.137/123/2010-CX-4 dated 09.05.2011 that this service could neither be covered under 'Goods Transport Agency' nor under 'Business Auxiliary Service' but the same, after amendment w.e.f. 01.05.2011, is covered under definition of 'Business Support Service' and hence the appellant filed refund claim for an amount of Rs.24,21,125/- from the department in respect of service tax paid by them. Thereafter, the appellant classified the service under "Business Support Service" and paid tax from July 2011.

2.2 However, from July 2012, they discontinued paying service tax in view of Clause 22 of Mega Exemption Notification No. 25/2012 dated 20.06.2012 which provides that '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; are exempted from payment of service tax" and the negative List.

2.3 Subsequently, the appellant had on 01.05.2011 appointed M/s. Ashapura Trade & Transport Pvt Ltd as their agent for carrying out aforesaid activity. It was also revealed during audit that the appellant had not paid service tax on such services during the period from July, 2012 to March, 2015.

3. M/s. GSRTC vide their letter dated 12.04.2015 stated that entire work related to booking, transshipment, delivery, loading, unloading of parcel, courier and specific allied services was the sole responsibility of M/s. Ashapura Trade & Transport Pvt Ltd, the buses of GSRTC are utilized for movement of goods, charges were received by GSRTC for providing space in their buses as well as on the roof tops. They also stated that as per Section 66D of the Finance Act, 1994, only services provided by way of transportation of goods by way of (a) Goods Transport Agency and (b) Courier Agency Service are taxable and other services provided by way of transportation of goods are covered under Negative List [Section 66D(p) of Finance Act, 1944]; that the amount received is towards transportation of goods in buses owned by GSRTC which is covered under Negative List.

4. It has been contested by the department that as per Section 66D of the Finance Act, the negative list shall comprise the following, namely-

- Service by Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than government.
- Service in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport
- Transport of good or passengers or
- Support service, other than services covered under clauses (i) to (iii) above, provided to business entities.

In view of the above, it was contested that any support service provided by the government to business entities except the services mentioned at Sr.No. (i) to (iii) would be taxable.

4.1 In the present case, it was revealed that M/s. GSRTC had provided space in buses and at bus stations for carrying out activities of transportation of goods (parcels) to nominated agent. The principal activity was being



undertaken by the nominated agent while assistance or support was provided by M/s. GSRTC. This was nothing but service falling under the category of "Business Support Service" and was accordingly taxable even after introduction of Negative List and issuance of Notification No.24/2012-ST dated 20.06.2012. The fact that service provided to nominated agent falls under "Business Support Service" had been confirmed by letter F.No.137/123/2010-CX-4 dated 09.05.2011 issued by the Director(ST).

4.2 However, after appointment of sole agent for said activities, the services provided by M/s. GSRTC, fall under category of "Business Support Service" and the same had not been covered in negative List/exemption notification. Thus, it was contended that service tax exemption availed by M/s. GSRTC on an amount of Rs.11,66,58,279/- during the period from July, 2012 to March, 2015 towards the services provided by them to M/s. Ashapura Trade and Transport Pvt Ltd was incorrect. Accordingly, a show cause notice dated 20.07.2017 for recovery of Service Tax amount Rs. 1,44,18,963/-along with interest and penalty was issued to the appellant. Further, another Show cause notice dated 17.04.2018 demanding an amount of Rs.1,59,86,057/- as Service Tax covering further period from April 2015 to June,2017 under Section 73(1A) of the Finance Act,1994 along with interest under section 75 and proposing penalty under Section 76 and Section 77 of the Act,1994 was also issued to the appellant. Service Tax demanded under both the above mentioned show cause notices were confirmed under the impugned order along with interest and penalty.

5. Being aggrieved with the impugned order, the appellant have preferred this appeal contesting, *inter-alia*, that extended period invoked is not warranted; that GSRTC being Corporation owned by the Government of Gujarat and hence it is erroneous to state that GSRTC has suppressed/concealed from the department deliberately, consciously and purposefully to evade payment of tax. For their contention that public sector undertaking cannot be saddled with any malafide intention or mis-statement, they cited case law of Hindustan Petroleum Crporation Ltd v/s CCE (2017) 11 TMI 600, Northern Coal Fields Ltd v/s CGST,CC(2018) 11TMI 356 and CCE Raipur v/s BSNL(2018) 3 TMI 190. They further argued that Section 66B and Section 66D (p) needs to be interpreted minutely; that the activity will be taxable only when it is of the courier agency or a goods transport agency, except that all other activity of road transportation are covered under Negative List;



5.1 They further argued that the activity carried out by the appellant are not covered under **courier agency** for the reasons that (i) GSRTC is not engaged in door to door transportation of time sensitive documents. Rather it is Ashapura Trade and Transport Pvt Ltd which is engaged in door-to-door transportation of documents/parcels as they are collecting documents/parcels and delivers to the ultimate customer at their address; that GSRTC is merely transporting goods in its buses that is being handed over by M/s Ashapura Trade and Transport Pvt Ltd from one destination and to be dropped at another destination; (ii) GSRTC does not have knowledge as to whom the documents/parcel belongs; (iii) the term used in the definition of courier agency is that the person must be engaged in door-to-door transportation. Gujarat High Court while interpreting "activity engaged in conduct of business' occurring in Section 2(7) (iii)(b) of the Finance Act 1962 in their favor; that since, GSRTC is engaged in the activity of passenger transportation by virtue of its establishment under the Road Transportation Corporation Act,1950 and therefore, is not engaged in the business of courier agency.(iv) in order to qualify the activity of a courier agency, it must be engaged in transportation of time-sensitive document, goods or article which is not the case of GSRTC.(v)GSRTC runs the buses as per their schedule and not as per instruction of M/s. Ashapura Trade and Transport Pvt Ltd (vi) it is M/s. Ashapura Trade and Transport Pvt Ltd who select and identify as to whether a particular bus will be able to transport its document in time (vii)GSRTC is not changing route or timing for Ashapura Trade and Transport Pvt Ltd. (viii) GSRTC is not engaged in transportation of time sensitive documents.

5.2 They further argued that the activity carried out by the appellant are not covered under **Goods Transport Agency** for the reasons that (i) buses of GSRTC are considered as goods carriage in term of definition as contained in section 2(14) of the Motor Vehicle Act since it is used for transportation of goods, however, that will not make GSRTC as a goods transport agency. (ii)GSRTC is not issuing 'consignment note' but issues "Parcel Receipt' to M/s Ashapura Trade and Transport Pvt Ltd which by no stretch of imagination can be considered as consignment note.(iii) They cited various case law stating that when the transporters did not issue consignment note or GR or Challans or any documents containing the particulars prescribed in explanation to Rule 4B of the Service Tax Rules,1994, the transporter cannot be called Goods Transport Agency and stated that since no consignment note has been issued by

the activity is not classifiable under the category 'goods transport



5.3. In view of above, they argued that the activities conducted by GSRTC is not covered either in the category of 'courier agency' or as 'goods transport agency'. However, the activity done is transportation of goods but such transportation is neither categorized as 'courier agency' or 'goods transport agency'. As a reason, such activity is covered in the negative List by virtue of Section 66D(p) of the Finance Act,1994.

5.4. With reference to opening line of section 66D(a) of the Finance Act,1994, i.e. (a) Services by government or local authority excluding the following services to the extent they are not covered elsewhere-, they argued that when services that are specified in the exclusion part of section 66D(a) are covered elsewhere, as in the present case is covered under section 66D(p) of the Act, the what is contained in 66D(p) of the Act will prevail and not what is contained in Section 66D(a) of the Act or its exclusion. The appellant further contested that in view of the Section 66F(2) which speaks for preferring most specific description over a general discretion, in the present case most specific description is transport of goods by road and not support services. On the issue of penalty under Section 77(2), it is argued that in ST-3 Return. One can show only figures, there is no space where one can write anything, even no remark column is provided and hence penalty under Section 77(2), for not disclosing full, true and correct information cannot be imposed.

5.5. They argued that it is a settled legal position that extended period of limitation by invoking proviso to the main section for demanding duty or tax beyond normal period of limitation would be justified only when assessee knew about the duty/tax liability and did not pay deliberately. Mere failure in giving correct information would not be a case for invoking extended period. They cited various case law in this regard.

6. Personal hearing in the case was held on 25.08.2020. Shri Rohan Thakkar, CA, appeared for the appellant. He reiterated the submissions made in grounds of appeal. In respect of first show cause notice, he stated that demand is not sustainable on limitation and submitted copies of three judgments which they relied upon.



6.1 He subsequently filed additional submission on 01.09.2020 raising additional grounds as under:

1. In order to generate additional revenue, the appellant transports goods of various persons from one city to another city. However, neither the appellant collects the goods from customer nor delivers to the customs at destinations. As no consignment notes are issued by GSRTC, it would not be considered as Goods Transport Agency.
2. They further pleaded that the activity carried out by them are similar to aircraft which is used for twin purpose, one for transportation of passengers and another for transportation of goods. As a reason, for transportation of goods, the activity will be stated as 'Transportation of Goods by Road' and not GTA or Courier. Providing another example of "transport of goods by Rail", the appellant pleaded that they are providing services of transportation of goods handed over to them by M/s Ashapura Trade and Transport Pvt Ltd which is collected at the destination by recipient from office of the appellant. Thus, it should not be taxed under "Courier Service as well as not under "GTA" as no consignment note is issued. They argued that transportation of goods by air, or by water or by rail, are not taxed under "Courier Service".
3. Further, such transportation through air, water and rail also assists the business, however is not covered under "business Support Service', similarly transportation of goods by road in the buses of GSRTC should be classified under transportation of goods by road and should not be classified under "Business Support Service'.
4. They stated that from 01.07.2012, the law has been substantially changed and the activity discussed i.e, (transportation of goods by road except courier & GTA)is covered under negative list which is clear from Section 66D (p) of the Act which cannot be ignored.
5. They further stated that transportation of goods by road will not be considered under Business Support Service as the same is explicitly covered in the Negative List i.e. Section 66D(p) of the Finance Act, 1994.
6. That in the present case, transportation of goods by road other than courier and GTA is covered in negative list-Section 66D(p), therefore, no service tax is required to be paid. In this context, they cited case law i.e. (i) M/s. Fortis Healthcare(India) ltd v/s CCE and CST, Chandigadh(2019) 9 TMI 462(tri-Chandigadh),(ii)Sarjak Container Lines Pvt ltd v/s CST (2018) 6 TMI 1362(tri-Mum)and (iii) Pushpak Steel Ind pvt Ltd v/s CCE & ST (2018) 10TMI 84(Tri-Mum).



7. I have carefully gone through the facts of the case available on records, grounds of appeal made in the Appeal Memorandum, written submissions made by the appellant as well as oral submissions made at the time of personal hearing. I find that the issue to be decided in the case is whether the activity carried out by the appellant falls under 'Business Support Service' and chargeable to service tax or falls under negative list w.e.f.1.07.2012. The demand pertains to period July, 2012 to March, 2015 and April, 2015 to June, 2017.

8. I observe that M/s. Ashapura Trade and Transport Pvt Ltd., and the appellant have entered into a contract for carrying out the activity of transportation of parcels, allied services and operation of courier services belonging to M/s. Ashapura Trade and Transport Pvt Ltd. through the buses operated by the appellant. This activity was earlier carried out by M/s. Sai Marketing & Trading Company. Based on the clarification issued by the Board vide letter F.No.137/123/2010- CX4 dated 09.05.2014, the said service was classified by the appellant under 'Business Support Service' and accordingly service tax was paid by them up to June, 2012.

8.1 However, the appellant, thereafter, discontinued payment of tax in view of Sr. No. 22 of Exemption Notification No. 25/2012-ST dated 20.06.2012 which provides exemption to *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.* It is the contention of the appellant that from 01.07.2012, the law has been substantially changed and the activity carried out by them is not covered either in the category of 'courier agency' or 'goods transport agency'. It was further contested that the activity done is transportation of goods but such transportation is neither categorized as 'courier agency' or 'goods transport agency' and as a reason, such activity is covered under the Negative List by virtue of Section 66D(p) of the Finance Act, 1994. However, the department's contention is that the services provided by M/s. GSRTC falls under category of "Business Support Service" and the same are not covered in negative List or exemption notification. It is apparent that the classification of activity carried out by the appellant has been settled in pre-negative list regime when it came to be classified under the Business support Service as defined under erstwhile section 65(104c) of the Finance Act, 1994.



9. It is observed that as per the contract, the appellant was required to provide space in their buses for transport of courier package/goods and also to provide necessary cover space at their designated bus stations premises for running booking offices and in case covered space not possible, uncovered space was to be provided. The appellant received income from the agents for providing such services. As per the clarification issued by the Director (Service Tax), CBEC vide letter F. No. 137/123/2010-CX-4 dated 09.05.2011, the activity undertaken by M/s Gujarat State Road Transport Corporation for providing space in their buses to M/s Shri Sai Marketing and Trading Company, Jalgaon for transport of goods is a mere transportation but cannot be covered under Goods Transport Agency Service as no consignment note was being issued. The said activity is also not covered under Business Auxiliary Service during the relevant period. However, after the amendment in the definition of "Business Support Service" by addition of words "operational or administrative assistance in any manner", the aforesaid activity of M/s Gujarat State Road Transport Corporation would constitute operational assistance and would be liable to Service Tax w.e.f. 01.05.2011 under the category of "Business Support Service". This can be better appreciated by referring to the amended definition of "Support Service of Business or Commerce" as provided under erstwhile Section 65 (104 c) of the Finance Act, 1994 w.e.f. 01.05.2011, which is reproduced below for ease of reference:

[(104c) "support services of business or commerce" means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, **[Operational or administrative assistance in any manner]**, formulation of customer service and pricing policies, infrastructural support services and other transaction processing.

Explanation. — For the purposes of this clause, the expression "infrastructural support services" includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security;]

9.1. As regards the contention of the appellant that the services are covered under **Negative List**, I find that they argued that the activities conducted by them is not covered either in the category of 'courier agency' or as 'goods transport agency', even though, the activity done is transportation of goods and as a reason, such activity is covered in the Negative List by virtue of Section 66D (p) of the Finance Act, 1994. The relevant Section 66D(p) of the Finance Act, 1994 is reproduced below for ease of reference:



66D. The negative list shall comprise of the following services, namely:—

(p) Services by way of transportation of goods-

(i) by road except the services of-

- (A) a goods transportation agency; or
- (B) a courier agency;

In view of the above, the service by way of transport of goods by road except the service of a goods transport agency or a courier agency falls under the negative list. I find that the appellant has analyzed in detail the ingredients of 'goods transport agency services' and 'courier services' and contended that activities conducted by them are not covered under any of said two categories. It is observed in this regard that the clarification issued by the Board has categorically come to a conclusion that their activity was not covered under Goods Transport Agency but under Business Support services when definition was amended to include "operational and administrative assistance in any manner" w.e.f. 01.05.2011. This view was accepted to them and they started paying service tax under this classification. I find that the service tax was demanded in show cause notice and confirmed under impugned order under Business Support Service and not under any of the above service i.e. 'goods transport services' or 'courier services'. Hence, it would be irrelevant to discuss the suitability of the activities in question under any of the said two services. I, therefore, agree with the observation of the adjudicating authority at para 51 of the impugned order wherein it is stated that "*merely transportation of goods by road is not correct but the activity carried out by them is support of business or commerce in operational manner*" and that "*the principal activity was being undertaken by the nominated agent M/s. Ashapura Trade and Transport Pvt Ltd while assistance or support was provided by M/s. GSRTC is found correct.*" I further observe that after issuance of clarification by the Board vide letter F.No.137//123/2010-CX-4 dated 09.05.2011, the matter of classification of the service provided by the appellant has already been settled holding the classification of the activities provided by the appellant under the category 'Business Support Services'. In view of above, I do not find force in the argument made by the appellant that *since, the activities conducted by GSRTC is not covered either in the category of 'courier agency' or as 'goods transport agency', such activity is covered in the negative List by virtue of Section 66D(p) of the Finance Act, 1994.* The contention made by the appellant in this regard is not legally sustainable and is rejected.



10 It is also argued by the appellant that the activity carried out by them are covered under **Exemption Notification No. 25/2012 dated 20.06.2012**. In this context, it is observed from the show cause notices and the impugned order that the appellant discontinued payment of service tax from July, 2012 onwards in view of clause 22 of the notification supra. I, therefore, reproduce said Sr. 22 of said notification for ease of reference:

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;

10.1 It is observed that exemption as above is provided to services by way of giving on hire, to a goods transport agency, a means of transportation of goods. The appellant M/s. GSRTC provided space in their buses for transport of courier packages/goods and also provide necessary covered space for running booking office in designated bus stations premises depending on availability and convenience for which they have received income from M/s. Ashapura Trade & Transport Pvt Ltd. This is not a case wherein any means of transportation is given on hire to goods transport agency and hence exemption under the above clause is not applicable. The appellant also has not come forward with any arguments in this context. Furthermore, it is not forthcoming from the record as to whether the exemption available under Sr. No. 22 of the Notification No. 25/2012 dated 20.06.2012 has been claimed by way of mentioning the same under periodical returns filed by the appellant or not. In view of this, the argument made by the appellant that the activities carried out by them are covered under Exemption Notification No. 25/2012-ST dated 20.06.2012 is not legally sustainable.

10.2. In view of the discussions made above, the activities carried out by the appellant are neither covered under negative list nor are exempted under Notification No. 25/2012 dated 20.06.2012 but the same are in the nature of support of business or commerce in operational manner and chargeable to service tax under the category 'Business Support Services'.

11. It is further observed that by reference to opening line of Section 66D(a) of the Finance Act, 1994, i.e. (a) Services by government or local authority excluding the following services to the extent they are not covered



elsewhere-, they further argued that when services that are specified in the exclusion part of section 66D(a) are covered elsewhere, as in the present case is covered under section 66D(p) of the Act, then what is contained in 66D(p) of the Act will prevail and not what is contained in Section 66D(a) of the Act or its exclusion. However, in view of the fact that section 66D (a) deals with services by government or local authority, the argument is not relevant. The word 'not covered elsewhere' is used in that context only and hence the argument of the appellant wherein comparison of Section 66D (a) is made with Section 66D(p) is not correct and not acceptable. The appellant further contested that in view of the Section 66F(2) which speaks for preferring most specific description over a general description and in the present case most specific description is transport of goods by road and not support services. In this context, it is observed that this contention of the appellant's is contrary to their own claim wherein they argued that their case is not falling under transport of goods by road. Hence, the contention made by the appellant is devoid of merit.

12. They further stated that transportation of goods by road will not be considered under Business Support Service as the same is explicitly covered in the Negative List i.e. under Section 66D(p) of the Finance Act, 1994. In this context, it is observed that in view of the clarification by the Board vide letter F.No.137//123/2010-CX-4 dated 09.05.2011, the activities undertaken by the appellant are covered under the category 'Business Support Services'. Hence, I do not find force in the above argument made by the appellant. Though the said clarification is issued in respect of service provided to M/s. Sai Marketing & Trading Company, the same is exactly applicable to the services provided by the appellant to M/s. Ashapura Trade & Transport Pvt Ltd. as same activities were undertaken in both the cases. Further, para 8 and para 45 of the impugned order also mentions that services provided by the appellant to both the above clients were one and same. In fact, the agreement between M/s. M/s. Ashapura Trade & Transport Pvt Ltd and the appellant was effective from July, 2011 and the appellant had paid service tax till June, 2012 under same classification. I find that the ambit of service tax w.e.f. 01.07.2012 was widened and as per Section 66B of the Finance Act, 1994, every service, except those in negative list, came under the purview of service tax law. Further, Section 66B (49) of the Finance Act, 1994 gives following interpretation:



"support services" means infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis.

I find that the activities carried out by the appellant are squarely covered under the interpretation contained in the Finance Act, 1994 w.e.f. 01.07.2012. In view of the above, the clarification dated 09.05.2011 is applicable in case of M/s. Ashapura Trade & Transport Pvt Ltd and also in negative list regime.

13. It is further contended that GSRTC being Corporation owned by the government and hence it is erroneous to stat that the appellant has suppressed/concealed facts from the department deliberately, consciously and purposefully to evade payment of tax. In this context, it is observed that in so far as the manner of compliance of law and procedure are concerned, the same can be expected to be more tax compliant from public sector undertakings than from other organizations. On the issue of following the procedures prescribed, the service tax provisions do not make distinction in respect of public sector undertakings or other organizations, more particularly when short payment/non- payment of tax are noticed. Therefore, said plea of the appellant does not hold good. Furthermore, it is also observed that in the era of self assessment, the assessee is sole responsible for declaring correct value of taxable income as well as responsible for payment of service tax correctly and show in their returns filed with the department. However, M/s. GSRTC has not taken into account all the incomes received by them for rendering taxable services in ST-3 returns filed by them. They were paying service tax prior to negative list regime and subsequently stopped payment claiming to be exempt from payment of service tax. Thus, the appellant has suppressed/concealed facts from the department deliberately, consciously and purposefully to evade payment of tax.

14. Further, on the issue of imposition of penalty under Section 77(2), it is argued that in ST-3 Return only figures can be shown, there is no space where one can write anything, even no remark column is provided and hence



penalty under Section 77(2), for not disclosing full, true and correct information cannot be imposed. However, in view of the fact that the demand is issued for recovery of tax which was not paid, the argument made by the appellant with reference to non availability of space/remark column in return, appears an attempt to divert the issue and hence the same is not acceptable

15. In view of the above, I observe that the activity undertaken by the appellant are in the nature of support of business or commerce in operational manner and chargeable to service tax under the category 'Business Support Services'

16. In view of the discussions made above, I do not find any merit in the appeal made by the appellant to interfere with the order of adjudicating authority. Accordingly, the appeal is rejected and impugned order is upheld.

17. अपीलकर्ता 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.

(Signature)
26th October, 2020..

(Akhilesh Kumar)

Commissioner, CGST (Appeals)

Date:



Attested

(Signature)
(D.A.Parmar)
Superintendent
Central Tax (Appeals)
Ahmedabad.

By R.P.A.D.

To,

M/s. Gujarat State Road Transport Corporation,
Account Department, Central Office,
ST Central Workshop, Naroda, Ahmedabad.

Copy to:

- (1) The Principal Chief Commissioner, CGST, Ahmedabad Zone,
- (2) The Principal Commissioner, CGST, Ahmedabad-North.
- (3) The Additional Commissioner, CGST, Div.-I, Ahmedabad -North.
- (4) The Dy./Astt. Commissioner, CGST, Div.-I, Ahmedabad -North.
- (5) The Dy./Astt. Commissioner(Systems),CGST, Ahmedabad-North.
- 2(6) Guard File,
- (7) P.A.File.