



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
☎ 26305065-079 : टेलिफैक्स 26305136 - 079 :
Email- commrappl1-cexamd@nic.in

DIN-20220164SW000083628B

स्पीड पोस्ट

- क फाइल संख्या File No : GAPPL/COM/STP/153/2021-Appeal-O/o Commr-CGST-Appl-Ahmedabad /5914705915
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-56/2021-22**
दिनांक Date : **31.12.2021** जारी करने की तारीख Date of Issue : **11.01.2022**
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original Nos. **08/ADC/2020-21/MSD** dated **31.07.2020**, passed by the
Additional Commissioner, Central GST & Central Excise, Ahmedabad-North.
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Appellant- M/s. GSRTC State Road Transport Corporation, GSRTC Central Workshop
Compound, P. O. Saijpur Bogha, Ahmedabad-382345.

Respondent- Additional Commissioner, Central GST & Central Excise, Ahmedabad-North.

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 :

(i) 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 राघिव, 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, 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 देडिट 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 :-

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, Giridhar 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 पढ़ी 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 अनुराधि-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 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) बिया 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।

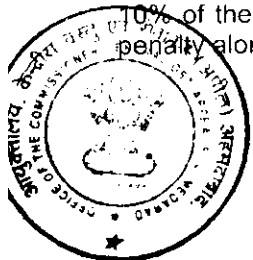
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

1. This order arises out of an appeal filed by M/s. Gujarat State Road Transport Corporation (GSRTC), Central Workshop Compound, P.O. Saijpur-Bogha, Ahmedabad-382345 (hereinafter referred to as 'appellant') against Order in Original No. 08/ADC/2020-21/MSC dated 31.07.2020 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, CGST & Central Excise, Commissionerate:Ahmedabad-North (hereinafter referred to as 'the adjudicating authority').

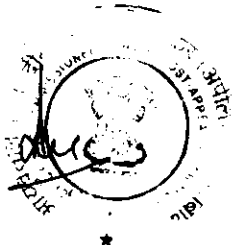
2. Facts of the case, in brief, are that the appellant was holding Service Tax Registration No. AAACG5587HST001 and engaged in providing the following services:

- (i) Rent-a-Cab Scheme Operator Service
- (ii) Courier Agency Service
- (iii) Selling of space or time slots for advertisements
- (iv) Business Support Service
- (v) Renting of Immovable Property Service

2.1 During the course of audit of books of accounts of the appellant conducted by the officers of erstwhile Audit-II Commissionerate, Ahmedabad for the period April 2012 to March 2014, it was observed that the said appellant have shown income booked under the head 'Operating Revenue' sub head 'Casual Contract Service' falling under 'Rent-a-Cab Scheme Operator Service' for F.Y. 2012-13 & F.Y. 2013-14 as well as income booked under 'Renting of Immovable Property Service' for F.Y. 2013-14 & F.Y. 2014-15, in excess of the Income declared in their ST-3 Return under the respective head, as per the details mentioned in the table below.

Rent-a-Cab Service:-

Sr. No.	Particulars	F.Y. 2012-13 (Rs.)	F.Y. 2013-14 (Rs.)
1	Total Income from Contract Service as per Balance Sheet	56,63,48,797	43,29,36,525
2	Income declared as per ST-3 Return	45,34,44,470	33,57,95,115
3	Difference (1-2)	11,29,04,327	9,71,41,410
4	Taxable Value of difference after allowing abatement of @60%	4,51,61,730	3,88,56,564
5	Service Tax @ 12.36%	55,81,990	48,0,2671
6	Total Service Tax payable		1,03,84,664



Renting of Immovable Property Service:-

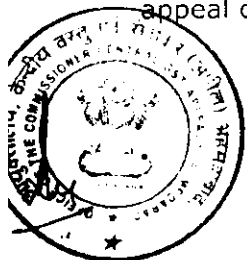
Sr. No.	Particulars	F.Y. 2013-14 (Rs.)	F.Y. 2014-15 (Rs.)
1	Licence fees from Canteen Contractors/Vendors as per Balance Sheet	5,49,43,957	6,25,30,199
2	Business benefit received-Licensees Contractors as per Balance Sheet	1,73,45,618	2,04,32,396
3	Total Income from Renting of Immovable Property	7,22,89,575	8,29,62,595
4	Income declared as per ST-3 Return	6,42,06,802	6,78,61,249
5	Difference (3-4)	80,82,773	1,51,01,346
6	Service Tax @ 12.36%	9,99,030	18,66,526
7	Total Service Tax payable		28,65,556

Based on audit observations, a Show Cause Notice under F.No. VI/1(b)/Tech-29/SCN/GSRTC/17-18 dated 15.02.2018 was issued to the appellant, by the Joint Commissioner, Central Tax (Audit), Ahmedabad, demanding Service Tax of Rs. 1,03,84,661/- under the category of 'Rent-a-Cab Service' and of Rs. 28,65,556/- under the category of 'Renting of Immovable Property Service' from them, invoking the extended period of limitation under the proviso to Section 73 of the Finance Act, 1994 alongwith Interest thereon, under Section 75 of the Finance Act, 1994. Further, it was also proposed to impose the penalty on the appellant under Section 76 as well as under Section 78 of the Finance Act, 1994.

2.2 The show cause notice issued under F.No. VI/1(b)/Tech-29/SCN/GSRTC/17-18 dated 15.02.2018 to the appellant has been adjudicated by the adjudicating authority vide the impugned order, as briefly reproduced below:

- (i) The demand of Service Tax of an amount of Rs. 1,03,84,661/- and also of Rs. 28,65,556/- against the appellant, has been confirmed under proviso to Section 73 of Finance Act, 1994, under the category of 'Rent-a-Cab Service' and 'Renting of Immovable Property Service' respectively and also ordered to recover the same alongwith Interest under Section 75 of the Finance Act, 1994.
- (ii) Penalty of an amount of Rs. 1,32,50,217/- imposed on the appellant, under Section 78 of the Finance Act, 1994.

3. Being aggrieved with the impugned order, the appellant preferred this appeal on the grounds, as reproduced in the following paragraphs.



3.1 Common Submission:-

The appellant is a Government Organization and undertakes the sovereign function of the Government. Therefore, no tax can be demanded on such activity. They relied upon the decision of Hon'ble Tribunal in case of Karnataka Industrial Areas Development Board Versus Commissioner, CGST, Bangalore North [2020(6)TMI 227-Tri.]. The said decision will apply with full force to facts of present case also. The order, therefore, is required to be set aside. They also relied upon the Circular No. 89/7/2006-Service Tax dated 18.12.2006 which is applicable and accordingly, no tax is payable.

3.2 As regards 'Rent-a-Cab Service':-

3.2.1 As regards the pre negative tax regime, it is submitted that it is now settled that no tax can be demanded. The appellant has relied upon the decision of Hon'ble Tribunal in case of APSRTC, Kadapa and others Versus CCE & ST, Tirupati [2017 (11) TMI 773- CESTAT Hyderabad].

3.2.2 It is submitted that the normal meaning of word cab will not include a passenger bus. Though cab has been given artificial meaning, its natural meaning is still relevant and since in its natural meaning cab will not include a passenger bus, the same is not liable to be taxed. Similarly, the phrase "rent-a-cab scheme operator" will also not include a Government Corporation which gives passenger bus for transport of persons under contract. The natural meaning of the phrase is relevant and would not include us and hence applicant is not liable to be taxed.

3.2.3 Demand beyond five years:

The period from April to June 2012 is beyond five years and hence, the demand for this period cannot be made. The notice in Para-16 states that the date of filing of return to be 21.02.2013. This is incorrect. The return was filed on 24.11.2012 and was revised on 21.02.2013. However, it is the date of original return which would apply for limitation purpose and not the date of revised return. Hence the demand is beyond five years and hence, time barred.

3.2.4 As regards demand for F.Y. 2012-13:

In the facts of the present case, the demand for the period from April, 2012 to June, 2012 cannot be made, both on merit and limitation. The basis for demand is the difference between Balance Sheet figures and Return figures. The Balance Sheet is prepared for the entire year and it is not available for part of the year. Therefore, the figures will not be available for comparing



with Return figures and in that event, the demand cannot be made for the entire period.

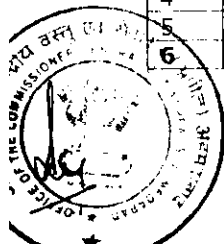
3.2.5 As regards Reconciliation:

The appellant had reconciled the figures, division wise as under:-

- (i) **F.Y. 2012-13 (Bhuj Division):** Amount of Rs. 6,04,973/- pertains to the buses given on rent for education purpose, which is exempted as per Sr. No. 9(b)(i) of Notification No. 25/2012-ST dated 20.06.2012.
- (ii) **F.Y. 2012-13 (Bulsar Division):** Amount of Rs. 10,78,402/- pertains to the buses given on rent for education purpose, which is exempted as per Sr. No. 9(b)(i) of Notification No. 25/2012-ST dated 20.06.2012.
- (iii) **F.Y. 2012-13 (Nadiad Division):** Entry of an amount of Rs. 41,32,310/- has been made twice, by mistake i.e. in the month of August, 2012 and also in March, 2013. Similarly, an amount of Rs. 1,39,907/- has also been entered twice i.e. in the month of July, 2012 and also in March, 2013.
- (iv) **F.Y. 2013-14 (Ahmedabad Division):** Entry of an amount of Rs. 80,07,946/- for which Service Tax has already been discharged in the month of December, 2012, has been again credited wrongly in the F.Y. 2013-14.
An amount of Rs. 1,80,44,381/- could not be reflected in Service Tax return, however, Service Tax leviable thereon has been paid subsequently, with interest as per the challan enclosed.
An amount of Rs. 9,69,323/- pertains to the buses given on rent for education purpose which is exempted.
- (v) **F.Y. 2013-14 (Valsad Division):** An amount of Rs. 18,17,009/- pertains to the buses given on rent for education purpose which is exempted.
- (vi) **F.Y. 2013-14 (General Division):** An amount of Rs. 1,71,69,518/- pertains to the income whose tax has been paid belatedly i.e. on 13.05.2015.

3.2.6 After taking the figures of reconciliation, as mentioned in Para-3.2.5 above, the remaining difference for both the years turns to Rs. 15,80,54,968/- as per the details mentioned below:

Sr. No.	Particulars	2012-13 (Rs.)	2013-14 (Rs.)
1	Total Income from Contract Service as per Balance Sheet	56,63,48,797	43,29,36,525
2	Income declared as per ST-3 Return	45,34,44,470	33,57,95,115
3	Difference (1-2) (A)	11,29,04,327	9,71,41,410
4	Total (as per Para-3.2.5) (B)	59,55,592	4,60,35,177
5	Remaining difference	10,69,48,735	5,11,06,233
6	Total Remaining Difference		15,80,54,968



3.2.7 The appellant has paid all the tax/amounts pertaining to the period of F.Y. 2009-10, F.Y. 2010-11 and F.Y. 2011-12 in the year F.Y. 2011-12 as per the working of Traffic department. However, some of the amounts were pertaining to subsequent year, due to various reasons. One reason is that the buses for contract carriage is booked in advance by the customer say in February, 2012 for its travel in June 2012 or so. In such case, the accounting is done when the bus performs traveling, however, tax has been paid on receipt of income. Considering that, the excess amount on which Service Tax has been paid is Rs. 42,12,46,705/- as on 31.03.2012, as per the details mentioned below:

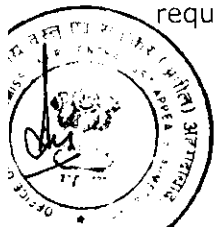
	2009-10	2010-11	2011-12
Amounts as per Books (Rs.)	38,99,58,693	31,80,66,977	30,47,77,625
Amount on which Service Tax paid (Rs.)	42,25,18,000	40,92,73,000	60,22,59,000
Excess Amount on which Service Tax paid (Rs.)	3,25,59,307	9,12,06,023	29,74,81,375
Total Excess Amount on which Service Tax paid (Rs.)			42,12,46,705

There are many departments of appellant and the full details from all the departments have not been obtained. However, the appellant had paid excess tax on Rs. 42.12 Crores (as advance) whose income is booked in subsequent years. As by way of illustration, appellant refers to below mentioned two transactions:

- Rs. 1,07,76,367/- pertains to Invoices for services issued to ONGC. Tax on the same has been paid in the year 2011-12, however, accounting of the same has been done in the year 2012-13.
- Rs. 1,18,37,376/- pertains to Invoices for services issued to ONGC. Tax on the same has been paid in the year 2011-12, however, accounting of the same has been done in the year 2012-13.

The excess amount so paid in earlier year can be adjusted against the Service Tax payable for subsequent years. The appellant also referred the provisions of Rule 6(4A) of Service Tax Rules, 1994. Accordingly, after considering the submissions, the remaining difference amounting to Rs. 15.80 Crores can be adjusted towards the excess amount of Rs. 42.12 Crores on which Service Tax has already been paid.

Considering above, the entire difference as per SCN under the head 'Rent-a-Cab Operator' has been explained and consequently, tax is not required to be paid.



3.2.8 It is a settled legal position that when the charges are charged on per KM basis there is no liability under this category. The appellant has relied upon the following decisions, in support of their contention.

- R.S. Travels Vs. CCE, Meerut [2008 (12) STR 27 (Tri. Del.)]
- CCE, Rohtak Vs. Miglani Taxi Service [2009 (15) STR 566]
- Vijay Travels Vs. CST, Ahmedabad [2010 (19) STR 671]
- M/s. Sunil L. Parmar Vs. CST, Ahmedabad [2010 (19) STR 584]

3.2.9 Renting not liable to Service Tax:-

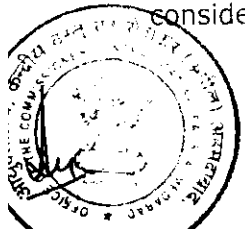
It is submitted that Service Tax is a value added tax. It is a tax on value addition provided by a service provider. It is obvious that it must have connection with a service and, there must be some value addition by that service. The provisions of Section 65(105)(o) has reference to a service provided or to be provided to any person, by rent-a-cab scheme operator in relation to "renting of a cab". Accordingly, one has to understand as to whether renting of cab by itself is a service. There is no dispute that any service connected with the renting of such cab would fall within the ambit of Section 65(105)(o) and would be eligible to Service Tax. The question is whether renting of such cab by itself constitutes a service and, thereby, a taxable service. Service Tax is a value added tax and it is a tax on the value addition provided by some service provider. In so far as renting of cab is concerned, there is no value addition. Consequently, the renting of cab by itself does not entail any value addition and, therefore, cannot be regarded as a service.

3.3 As regards 'Renting of Immovable Property':-

The figures recorded under books of account includes, Service tax and Municipal Tax paid and recovered from licensee, whereas in the Service Tax, only assessable value is recorded.

It also includes amount received towards Pay and Use Toilets. It is submitted that the amount represents receipt which is being generated from providing of urinal facility to common public under various "Swachhata Schemes" of Government and such receipts are exempted as per Sr.No. 38 of Notification No. 25/2015 dated 20.06.2012. Letter No. 356/45/2006-TRU, dated 23.10.2006 issued by CBEC is also referred.

It also includes (i) deposit taken for immovable property and (ii) sale of scrap, however, wrongly accounted under accounting code 131. It also includes provision for income which get reversed in subsequent year. After, considering the above points, the reconciliation is as under:

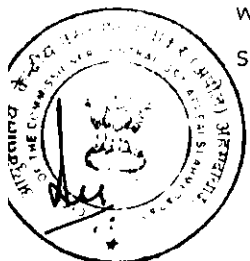


Sr. No.	Particulars	2013-14 (Rs.)	2014-15 (Rs.)
1	Licence fees from Canteen Contractors/Vendors as per Balance Sheet	5,49,43,957	6,25,30,199
2	Business benefit received-Licenses Contractors as per Balance Sheet	1,73,45,618	2,04,32,396
3	Total Income from Renting of Immovable Property	7,22,89,575	8,29,62,595
4	Income declared as per ST-3 Return	6,42,06,802	6,78,61,249
5	Difference (3-4) (A)	80,82,773	1,51,01,346
Part of the difference explained as under:-			
	Provision of Income	21,70,332	19,81,359
	Deposit for property	13,22,963	38,63,465
	Pay and Use	31,47,291	38,50,674
	Sale of Scrap	4,23,197	3,08,991
	Recovery of Service Tax/Municipal Tax	7,92,698	5,56,085
	Total (B)	78,56,481	1,05,60,574
	Remaining Difference (A)-(B)	2,26,292	45,40,772

The appellant is still in process to reconcile the difference and the same will be provided during hearing.

3.4 Invocation of extended period of limitation:-

- The appellant, being a Government Corporation, no individual has any personal interest in evasion of tax. There could not have been any malafide intention to evade tax and intention to evade tax is pre-condition for invoking extended period of limitation.
- The balance sheets and annual books of accounts are public documents. Balance sheet being public document, any demand raised on the basis of information appearing in the balance-sheet, invoking extended period of limitation was illegal and once the figures are reflected in balance sheet, there cannot be any malafide with an intent to suppress. The following case laws have been relied upon in support of their contention:
 - (i) *Hindalco Industries [2003 (161) ELT 346]*
 - (ii) *Kirloskar Oil Engines Ltd. Vs. CCE, Nasik [2004 (178) ELT 998]*
 - (iii) *Martin & Harriss Laboratories Ltd. Vs. Commissioner [2005 (185) ELT 421]*
 - (iv) *Kisan Sahkari Chini Mills Ltd. Vs. Commissioner, CCE, Merut-I [2019 (2) TMI 343]*
 - (v) *CCE Vs. Apex Construction Co. [2016 (10) TMI 959-Tri (New Delhi)]*
- In cases where certain information was not disclosed as the assessee was under a bonafide impression that it was not duty bound to disclose such information, it would not be a case of suppression of facts as held



by the Supreme Court in the landmark cases of Padmini Products and Chemphar Drugs & Liniments reported in [1989 (43) ELT 195 (SC)] and [1989 (40) ELT 276 (SC)].

- Hon'ble Supreme Court in case of Continental Foundation It. Venture Vs. CCE, Chandigarh reported in [2007 (216) ELT 177 (SC)] held that mere omission to give correct information was not suppression of facts unless it was deliberate and to evade the payment of duty. The appellant also relied upon the judgment in case of M/s. Jaiprakash Industries Ltd. [2002 (146) ELT 481 (SC)] and M/s. Bharat Hotels Limited Vs. Commissioner, Central Excise (Adjudication) [2018 (2) TMI (23)].
- The appellant, being a corporation owned by Government of Gujarat, extended period of limitation cannot be invoked as there cannot be suppression of fact with an intent to evade the payment of Service Tax. They relied upon the following decisions:
 - (i) *Hindustan Petroleum Corporation Ltd., Vs. CCE [2017 (11) TMI (600)]*
 - (ii) *Northern Coal Fields Ltd. Vs. CGST, CC and CE [2018 (11) TMI (356)]*
 - (iii) *CCE, Raipur Vs. The General Manager, Telecom District, BSNL [2018 (3) TMI (190)]*

3.5 **As regards Interest:-**

It is submitted that since tax is not payable, question of interest would not arise.

3.6 **As regards Penalty:-**

It is submitted that when the tax is not payable, no penalty can be demanded. Further, the appellant, being a Government Corporation, cannot and did not have any intention to evade tax. Therefore, penalty under Section 78 of the Finance Act, 1994 cannot be imposed. This is also a fit case for waiver of penalty under Section 80 of the Finance Act, 1994, in as much as the appellant has bonafide.

The appellant relied upon the decision of Hon'ble Tribunal in a similar case of Andhra Pradesh State Road Transport Corporation, Hyderabad Vs. CCCE & ST, Hyderabad [2017 (11) TMI (34)-CESTAT Hyderabad] wherein Hon'ble Tribunal has set aside penalty observing that "the matter is one of the unproductive and that the question of taxability on the services was mired in confusion and litigation, the penalties imposed in all these cases are set aside".

The appellant was granted opportunity for personal hearing on 12.11.2021 through video conferencing. Shri S. J. Vyas, Advocate, appeared

for personal hearing as authorised representative of the appellant. He reiterated the submissions made in Appeal Memorandum. He further stated that the matter involved reconciliation of various figures in their financial records with ST-3 Returns, and a detailed reconciliation was also submitted but not considered. Accordingly, he requested that the matter be remanded back to the adjudicating authority.

5. I have carefully gone through the facts of the case available on record, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellant at the time of hearing. The issues to be decided in the present appeal are as under:

- Whether the demand of Service Tax amounting to Rs. 1,03,84,661/- against the appellant under the category of "Rent-a-Cab Service", confirmed by the adjudicating authority vide the impugned order under proviso to Section 73 of Finance Act, 1994 is correct or otherwise?
- Whether the demand of Service Tax amounting to Rs. 28,65,556/- against the appellant under the category of "Renting of Immovable Property Service", confirmed by the adjudicating authority vide the impugned order under proviso to Section 73 of Finance Act, 1994 is correct or otherwise?
- Whether the penalty of Rs. 1,32,50,217/- imposed on the appellant, under Section 78 of the Finance Act, 1994 is correct or otherwise?

6. It is observed from the case records that during the course of audit of records of the appellant by the officers of erstwhile Audit-II Commissionerate, Ahmedabad, it was noticed that the Income booked in the balance sheet for the F.Y. 2012-13 and F.Y. 2013-14 under the head 'Operating Revenue' and sub head 'Casual Contract Service' falling under "Rent-a-Cab Scheme Operator Service", was in excess of the amount shown in the ST-3 Returns for the respective period [as per the details shown in the table under Para-2.1 above].

6.1 Similarly, it was also observed during the audit that the income booked in the balance sheet for the F.Y. 2013-14 and F.Y. 2014-15 under "Renting of Immovable Property Service", was in excess of the amount shown in the ST-3 Returns for the respective period [as per the details shown in the table under Para-2.1 above].

6.2 It is further observed that the appellant was requested to submit the clarification alongwith documentary evidences in respect of the same. As the clarification sought for was not submitted by the appellant, a Show Cause



Notice under F.No. VI/1(b)/Tech-29/SCN/GSRTC/17-18 dated 15.02.2018 was issued to them, demanding Service Tax of Rs. 1,03,84,661/- under the category of 'Rent-a-Cab Service' and of Rs. 28,65,556/- under the category of 'Renting of Immovable Property Service'.

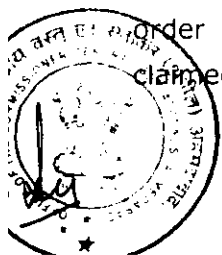
7. As regards the demand confirmed in respect of 'Rent-a-Cab Service' in the present case, it is observed that the appellant had submitted the reconciliation details (as mentioned in Para-3.2.5 to Para-3.2.7 above) before the adjudicating authority during the course of adjudication and contended that they are not liable to pay Service Tax on the differential amount, on account of the different reasons as mentioned herebelow:

- *Certain amounts received in respect of buses given on rent for education purpose, which is exempted in terms of Notification No. 25/2012-ST dated 20.06.2012.*
- *Certain amounts where Entries of the respective amounts have been made twice, by mistake.*
- *Certain amounts on which the Service Tax has been paid belatedly, with interest leviable thereon.*
- *Certain amounts on which the Service Tax leviable has been paid during the period from F.Y. 2009-10 to F.Y. 2011-12, however the same were booked in subsequent years.*

I also find that in absence of any substantial evidences produced by the appellant, the adjudicating authority while passing the impugned order has neither examined the eligibility of the exemption notification claimed by the appellant nor accepted the submission of the appellant as regards the non-taxability in respect of the amounts, which have been claimed as entered twice in their books of accounts and accordingly, confirmed the demand against the appellant.

7.1 Further, as regards the demand confirmed in respect of 'Renting of Immovable Property Service' in the present case, it is observed that the appellant had submitted the reconciliation details (as mentioned in Para-3.3 above) before the adjudicating authority during the course of adjudication and contended that certain amounts were pertain to exempted services and rest are the amount which are not covered under Service Tax and accordingly, they are not liable to pay Service Tax on the differential amount.

7.2 I also find that in absence of any substantial evidences produced by the appellant, the adjudicating authority while passing the impugned order has neither examined the eligibility of the exemption notification claimed by the appellant nor accepted the submission of the appellant as



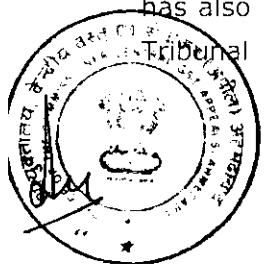
regards the non-taxability of the services and accordingly, confirmed the demand against the appellant.

8. It is pertinent to mention in this context that the demand has been made on the basis of audit of the records of the appellant and that the appellant has neither produced relevant records during the audit nor to the adjudicating authority during adjudication proceedings. In the present case, it is observed that the appellant has claimed major portion of the demand under exempted category or have been paid either in the previous financial year or paid belatedly, alongwith interest in the subsequent financial year which have not been accepted by the adjudicating authority in absence of any substantial evidences produced by them. Accordingly, I find that the impugned order has been passed without actual reconciliation of figures appearing in financial records with those of ST-3 returns filed by appellant.

8.1 Further, I find that in absence of verification about the genuineness of quantification of the revenue shown against a particular service head, the claims of appellant regarding non taxability of services or exemption and abatements cannot be taken at its face value and hence, not sustainable. The Apex Court has also held in the case of Mysore Metal Industries [1988 (36) ELT 369 (SC)] that the burden is on the party who claims exemption, to prove the facts that entitled him to exemption.

8.2 Accordingly, I find that it would be appropriate in the interest of justice to give a last opportunity to the appellant to produce the relevant documentary evidences before the adjudicating authority in support of their contention to arrive at correct reconciliation. For this, the matter is remanded back to the adjudicating authority to examine the contention of the appellant after following the principles of natural justice and to decide it afresh. Further, the appellant is directed to produce the relevant documents in support of their contentions for exemption or non-taxability before the adjudicating authority so as to examine the matter on merits.

9. Further, it is also observed that the appellant has raised contention relying the decision of Hon'ble Tribunal in case of Karnataka Industrial Areas Development Board Versus Commissioner, CGST, Bangalore North [2020 (6) TMI 227- Tri.] and also CBEC Circular No. 89/7/2006-Service Tax dated 18.12.2006 that they are not liable to pay Service Tax, which has been confirmed under 'Rent-a-Cab Service' vide the impugned order. Further, it has also been contended by the appellant, relying on the decision of Hon'ble Tribunal in case of APSRTC, Kadapa and others Versus CCE & ST, Tirupati



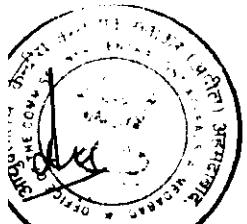
[2017 (11) TMI 773-CESTAT, Hyderabad] that the said issue is settled, particularly for the pre-negative tax regime.

9.1 As regards the said contentions made by the appellant relying on the decisions of Hon'ble Tribunal, I find that the neither the appellant had made the said submission before the adjudicating authority during the adjudication nor the adjudicating authority has discussed or recorded any findings in the impugned order as regards the applicability of the principles laid down by the Hon'ble Tribunal to the facts of the present case. Further, it is also observed that the demand confirmed on this issue against the appellant covers the period pertaining to pre-negative list regime as well as the negative list regime. However, I find that the adjudicating authority has not discussed about the relevant provisions of Service Tax applicable, particularly during pre-negative list regime. Accordingly, I find that the applicability of the judgments issued by Hon'ble Tribunals in respect of the demand confirmed for 'Rent-a-Cab Service, have not been examined by the adjudicating authority at any point of time. Hence, it would also be proper to remand back the said issue to the adjudicating authority to examine the said aspect also, in respect of demand pertaining to pre-negative list regime as well as negative list regime, during the process of denovo consideration of the demand in the present case.

10. Further, as regards the contention of the appellant on the issue of limitation and invoking extended period on the ground of suppression of facts, I do not find it proper to examine the said issue at this juncture when the substantial issues in question are being remanded to the adjudicating authority. The appellant is free to raise this issue before the adjudicating authority.

11. On careful consideration of the relevant legal provisions, judicial pronouncements and submission made by the appellant, I passed the Order as below:

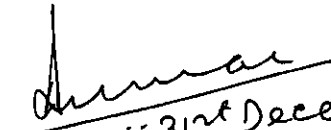
- (i) As regards the demand of Service Tax amounting to Rs. 1,03,84,661/- confirmed vide the impugned order, under the category of "Rent-a-Cab Service", I remand the matter back to the adjudicating authority, to decide it afresh after following the principles of natural justice.
- (ii) Further, as regards the demand of Service Tax amounting to Rs. 28,65,556/- confirmed vide the impugned order, under the category of "Renting of Immovable Property Service", I remand the



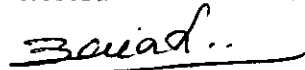
matter back to the adjudicating authority, to decide it afresh after following the principles of natural justice.

- (iii) Further, the impugned order as regards the penalty imposed of Rs. 1,32,50,217/- on the appellant, under the provisions of Section 78 of the Finance Act, 1994 is also remanded back to that extent for fresh consideration by the adjudicating authority following the principles of natural justice.

12. The appeal filed by the appellant stands disposed off in above terms.

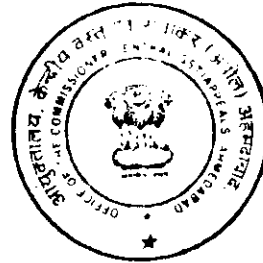

31st December,
(Akhilesh Kumar) 2021..
Commissioner (Appeals)
Date:31st December, 2021

Attested



(M.P.Sisodiya)

Superintendent (Appeals)
Central Excise, Ahmedabad



By Regd. Post A. D

M/s. Gujarat State Road Transport Corporation,
GSRTC Central Workshop Compound,
P.O. Saijpur-Bogha,
Ahmedabad-382345

Copy to :

1. The Pr. Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST and Central Excise, Commissionerate:Ahmedabad-North.
3. The Deputy /Asstt. Commissioner, Central GST, Division-I (Naroda), Commissionerate:Ahmedabad-North.
4. The Deputy/Asstt. Commissioner (Systems), Central Excise, Commissionerate:Ahmedabad-North.
5. ✓ Guard file
6. PA File