



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeals Ahmedabad Commissionerate  
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आज़ादी का  
अमृत महोत्सव

**By SPEED POST**

DIN:- 20240264SW00000093E3

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/3870/2023 / 1320 - 24
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-195/23-24 and 25.01.2024
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	31.01.2024
(ङ)	Arising out of Order-In-Original No. CGST/WT07/HG/887/2022-23 dated 16.2.2023 passed by The Assistant Commissioner, CGST Division-VII, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Kantaben Jagdishchandra Prajapati 49, Tulip Bunglow Nr. Surdhara Circle, Memnagar Ahmedabad - 380059

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो सकता है।

Any person aggrieved by this Order-in-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way.

भारत सरकार का पुनरीक्षण आवेदन:-

**Revision application to Government of India:**

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने 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 प्रक्रिया के दौरान हुई हो।

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.

(ख) 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।



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.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) 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।

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.

(2) 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 भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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 सेवा कर 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 :-

(2) उक्तलिखित परिच्छेद में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004. In case of appeals other than as mentioned above para.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated



(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर 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) एके प्रति अपील के मामले में कर्तव्यमांग (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 सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) 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।

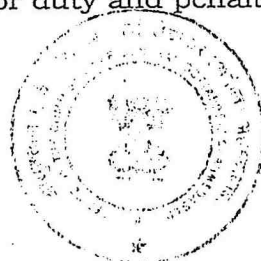
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

(6) (i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



**ORDER-IN-APPEAL**

The present appeal have been filed by M/s. Kantaben Jagdishchandra Prajapati, 49, Tulip Bungalow, Near Surdhara Circle, Memnagagr, Ahmedabad- 380059 (hereinafter referred to as "*the appellant*") against Order-in-Original No. CGST/WT07/HG/887/2022-23 dated 16.02.2023 (hereinafter referred to as "*the impugned order*") passed by the Assistant Commissioner, Central GST, Division VII, Ahmedabad North (hereinafter referred to as "*the adjudicating authority*"). The appellant are registered and are holding Service Tax Registration No. AEMPP1269CST001.

2. Briefly stated, the facts of the case are that on the basis of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2015-16, it was noticed that the appellant during said period had reflected less taxable value in their ST-3 Return as compared to the service income declared in their ITR/Form-26AS. Letters were, therefore, issued to the appellant to explain the reasons for short/non-payment of tax and to provide certified documentary evidences for said period. The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts. The detail of the income is as under;

**Table-A**

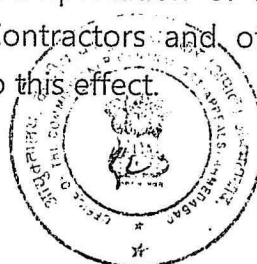
<i>F.Y.</i>	<i>Value as per ITR</i>	<i>Value as per STR-3</i>	<i>Difference in value</i>	<i>Service tax rate</i>	<i>Service Tax liability</i>
2015-16	19,59,670/-	-	19,59,670/-	12.36%	2,84,152/-

2.1 A Show Cause Notice No. CGST/AR-II/Div-VII/A'bad North/TPD-UR/92/2020-21 dated 23.1.2020 was therefore issued proposing Service Tax demand amounting to Rs.2,84,152/- for the F.Y 2015-16, under proviso to sub-section (1) of Section 73 of the Finance Act, 1994. Recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 77(1)(c), Section 77(2) & Section 78 of the Finance Act, 1994 were also proposed.

2.2 The Show Cause Notice was adjudicated, ex-parte, vide the impugned order by the adjudicating authority wherein the Service Tax demand amounting to Rs.2,84,152/- was confirmed along with interest. Penalty of Rs. 1000/- each was imposed under Section 77(1) and Section 77(2) of the Finance Act, 1994 and Penalty of Rs. 2,84,152/- was also imposed under Section 78.

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

- The appellant is a proprietor of 'M/s. Ronak Transport' and is engaged in providing GTA services in relation to the transportation of bricks to various customers including builders, Developers, Contractors and others. They have issued consignment notes / Delivery challan to this effect.



- In response to the department's letter seeking documents, the appellant have submitted all documents vide letter dated 20.10.2020 and 23.10.2020 which were received by the department on 11.10.2020. But these documents were not considered and a SCN was issued. Even, in reply to SCN the appellant has submitted that they were providing GTA services covered under Entry No. A(ii) of the RCM Notification No.30/2012-ST dated 30.06.2012 and hence were not liable to pay service tax. However, the impugned order was passed without considering the reply or granting a personal hearing. All these actions violate the principles of natural justice.
- As there is no suppression of facts, extended period cannot be invoked hence the demand is time barred.

4. Personal hearing in the appeal matter was granted 11.01.2024. Shri Jasmat Jidiya, Chartered Accountant appeared on behalf of the appellant for personal hearing. He reiterated the grounds of appeal and stated that the appellant is a GTA and therefore in terms of RCM, the liability to pay tax is on the recipient He therefore requested to allow the appeal.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of Rs. Rs.2,84,152/- against the appellant along with interest and penalty, in the facts and circumstance of the case is legal and proper or otherwise. The demand pertains to the period F.Y 2015-16.

6. It is observed that the entire demand has been raised on the basis of third party data. The appellant have earned differential income of Rs.19,59,670/- in the F.Y. 2015-16 which the appellant claim is pertaining to the transportation income provided to various clients. On going through the Balance Sheet, I find that the appellant has shown Rs.19,59,670/- as transportation income. In terms of Serial no. (2) of the Notification No.30/2012-ST dated 30.06.2012, under RCM the liability to pay Service tax is on the recipient of Service. Relevant text is reproduced below;

**Notification No.30/2012-ST dated 30.06.2012**

*Services for which tax is payable or partially payable by persons receiving the service — Service tax payable by Reverse Charge System in relation to insurance business, GTA, sponsorship, Arbitral Tribunal, legal services by Advocates, support services provided by Govt. or local authorities (except specified services), renting of motor vehicles on abated value, renting of motor vehicles on unabated value (partially also payable by service provider), manpower supply (partially also payable by service provider), work contract (partially also payable by service provider), service provide from non-taxable territory but received in taxable territory (partially also payable by service provider) — Notification Nos. 15/2012-S.T. & 36/2004-S.T. superseded*

*In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 213(E), dated the 17th March, 2012, and (ii) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2004-Service Tax, dated the 31st December, 2004, published in*

the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 849(E), dated the 31st December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely :—

**I. The taxable services,—**

(A)(i) provided or agreed to be provided by an insurance agent to any person carrying on the insurance business;

(ii) provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—

- (a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
- (b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;
- (c) any co-operative society established by or under any law;
- (d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;
- (e) any body corporate established, by or under any law; or
- (f) any partnership firm whether registered or not under any law including association of persons;

TABLE

Sl. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
2.	<i>in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road</i>	<i>Nil</i>	<i>100%</i>

**6.1** The appellant has submitted a copy of Form-26AS to prove that the transport income received was from clients who falls under category (a) to (g) of Sr.No.A(II) of the said notification. On having gone through Form-26AS, it is observed that the appellant has earned income of Rs. 58,310/- from clients who fall under aforesaid categories and therefore in respect of these incomes, I find that the liability to pay tax under GTA service is on such recipient and not on the appellant. However, for the remaining income of Rs. 19,01,360/- (not reflected in Form-26AS), I find that the appellant has not provided the list of services recipient, their respective ledgers, copy of consignment notes issued etc either before the adjudicating authority or before the appellate authority to establish that the service recipients fall under category (a) to (g) of Sr.No. A(II). In the absence of any documentary evidence, the exemption claimed on income of Rs. 19,01,360/- cannot be extended to the appellant.

**6.2** In view of the above, I uphold the tax liability of **Rs.2,75,697/-** (14.5% of Rs.19,01,360/-). When the demand sustains there is no escape from interest, the same is therefore recoverable with applicable rate of interest on the tax held sustainable.

**7.** I find that the imposition of penalty under Section 78 is also justifiable as it provides penalty for suppressing the value of taxable services. Hon'ble Supreme Court in case of *Union of India v/s Dharamendra Textile Processors* reported in [2008 (231) E.L.T. 3 (S.C.)], concluded that the section provides for a mandatory penalty and leaves



no scope of discretion for imposing lesser penalty. I find that the appellant was rendering a taxable service but failed to assess their tax liability correctly with intent to evade the taxes. This act thereby led to suppression of facts and such non-payment of service tax undoubtedly brings out the willful mis-statement and fraud with intent to evade payment of service tax. If any of the circumstances referred to in Section 73(1) are established, the person liable to pay tax would also be liable to pay a penalty equal to the tax so determined above.

8. As regards, the imposition of penalty of Rs.1000/- each under Section 77(1) and 77(2) is concerned, I find that the same is imposable as the appellant failed to submit the data and documents called for by the Range officer and contravened the provisions of the service tax laws by not paying proper taxes. However, considering the reduction in taxable income, I reduce the penalty from Rs.1000/- to Rs.500/- each.

9. In view of the above discussion, I partially uphold the impugned order confirming the service tax demand of **Rs.2,75,697/-** alongwith interest and penalties.

अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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



(ज्ञानचंद जैन)

आयुक्त(अपील्स)

Date: 25.1.2024

Attested



(रेखा नायर)

Superintendent (Appeals)

CGST, Ahmedabad



By RPAD/SPEED POST

To,

M/s. Kantaben Jagdishchandra Prajapati,  
49, Tulip Bunglow, Near Surdhara Circle,  
Memnagagr, Ahmedabad- 380059

- Appellant

The Assistant Commissioner,  
CGST, Division-VII,  
Ahmedabad North

- Respondent

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (System), CGST, Ahmedabad (Appeals) (For uploading the OIA)
4. Guard File.



