



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeals Ahmedabad Commissionerate  
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**By SPEED POST**

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(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/5237/2023/ 2646-50
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-264/23-24 and 29.02.2024
(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	07.03.2024
(ङ)	Arising out of Order-In-Original No. 08/AC/Demand/23-24 dated 25.4.2023 passed by The Assistant Commissioner, CGST Division-I, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Pushpaben Patel 12, Green Palace Flat Saijpur Bogha Ahmedabad-382345

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 प्रकिया 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 अपीलिय 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 रू 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 अपीलिय 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 अपीलिय न्यायाधिकरण (सिस्टेट) एके प्रति अपीलो 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**

M/s. Pushpaben Patel, 12-Green Palace Flat, Saijpur Bogha, Ahmedabad-382345 (hereinafter referred to as 'the appellant') have filed the present appeal against the Order-in-Original No.08/AC/Demand/2023-24 dated 25.04.2023 (hereinafter referred as 'impugned order') passed by the Assistant Commissioner, Central GST, Division-I, Ahmedabad North (hereinafter referred to as 'the adjudicating authority'). The appellant is holding PAN No. DCIPP5968M.

2. The facts of the case, in brief, are that on the basis of the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16, it was noticed that the appellant had declared Sales / Gross Receipts of Rs. 12,41,003/- in their ITR. As the appellant was not registered with the department, no service tax was paid on such receipts/income. Letters were, therefore, issued to them to explain the reasons for non-payment of tax on the income and to provide certified documentary evidences for the F.Y. 2015-16. The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts. The service tax liability of Rs.1,79,945/- was therefore quantified on the income of Rs.12,41,003/-.

**Table-A**

F.Y.	Sales / Gross Receipt as per ITR	Service Tax
2015-16	12,41,003/-	1,79,945/-

2.1 A Show Cause Notice (SCN) No. AR-III/Pushpaben/S.T./Un-Reg/2015-16 dated 09.06.2021 was issued to the appellant proposing recovery of service tax amount of Rs.1,79,945/- not paid on the value of income received during the F.Y. 2015-16, along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalties under Section 77(1)(a), 77(1)(c), Section 77(2) and Section 78 of the Finance Act, 1994 were also proposed.

3. The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs.1,79,945/- was confirmed along with interest. Penalty of Rs.10,000/- each was imposed under Section 77(1)(a) & Section 77(1)(c) and penalty of Rs.1,79,945/- under Section 78 was also imposed. However, penalty under Section 77(2) was dropped.

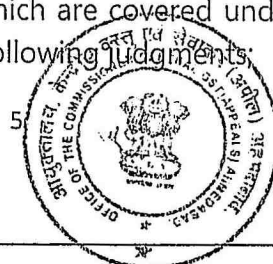
4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant has preferred the present appeal, on the grounds elaborated below;

- The Appellant, as an individual, was engaged in the proprietorship business and from December 2015 to March 2016, has provided services of transportation of goods by road. As the services of goods transportation by road provided by Goods Transport Agency ('GTA') are covered under reverse charge and services of goods transportation by road provided by non-GTA (carting services) are covered under negative list of services under the service tax laws, the Appellant did not obtain service tax registration and it was only for the purpose of filing this appeal they have obtained a non-assessee registration bearing registration no. DCIPP5968MSE001.
- The Appellant was carrying out this business of transportation of goods by road exclusively for the goods sold by M/s Mineral Enterprise (PAN: ABBFM4288N). The liability of payment for such goods transported was on the goods recipients i.e.,

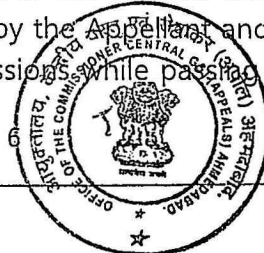


the customers of M/s Mineral Enterprise. As a standard practice, both the seller of goods i.e. M/s Mineral Enterprise and the appellant would generate a common Bilty (herein after referred to as 'consignment note'), which was issued along with the goods transported along with weighbridge receipts and royalty receipts. Furthermore, at the conclusion of each month, the appellant would issue an invoice to the recipients, consolidating all the trips of goods transported to them during that specific period. The appellant consistently followed this procedure due to their exclusive involvement in the transportation of goods sold by M/s Mineral Enterprise. Considering that the goods transportation services provided by the Appellant is liable for the payment of service tax on reverse charge basis as specified by Notification No.30/2012-Service Tax dated 20-Jun-2012 and the remaining taxable services provided to Trust and individuals, is not subjected to the provisions of Factories Act, as are below the threshold of basic exemption limit of Rs. 10 lakhs, thus, the Appellant did not obtain registration under Service Tax.

- As there was no income for F.Y. 2014-15, ITR was not filed and therefore no service tax is applicable. The taxable supply in the F.Y. 2015-16 was amounting to Rs.1,80,903/-, on which the tax liability was on the service recipient and as this income is below the threshold limit of Rs. 10 lakhs the appellant is not liable to pay any taxes in terms of Notification No.33/2012-ST dated 2012.
- The Appellant sought the utilisation of rented trucks belonging to other transporters (individual truck drivers), with the intention of facilitating the transportation of the goods. The Appellant has not collected any service tax on the services provided to the recipients of those services. The consignment notes were issued for each transportation trip. However, the Appellant acknowledges that there were unintentional omissions of one specific detail among the eight details prescribed under the Explanation to Rule 4B in the consignment notes issued. The Appellant inadvertently failed to include the specific information regarding the "Person liable for paying service tax" in the consignment notes. However, it is a widely recognised practice during the service tax regime that the person responsible for the transportation of goods is also liable to fulfil the service tax obligations on a reverse charge basis. This means that the recipient of the transportation services assumes the responsibility of discharging the service tax liability.
- Both the Show Cause Notice (SCN) and the impugned Order, the department failed to consider the substantial benefit of a 70% abatement. According to Serial No. 7 of Notification 26/2012-ST, dated 20-Jun-2012, the service tax is payable on 30% of the gross amount charged for services provided by a GTA. It should be noted that an abatement of 70% of the gross amount charged is explicitly permitted for the purpose of determining the taxable value. Therefore, the service tax liability should be calculated based on the reduced value after applying the abatement. Appellant, being a party that never obtained a service tax registration, has never availed any input credits. Therefore, the Appellant in compliance with the provision did not avail or utilise the input credits.
- If the services provided by the appellant does not classify under GTA services then the above services should be treated as carting services (transportation services provided by a non-GTA services) which are covered under Section 66D(p) of the Finance Act. Reliance is placed on following judgments,



- Narendra Road Lines (P.) Ltd. Vs Commissioner of Customs, Central Excise & Central GST, Agra
  - Nandganj Sihori Sugar Co. Vs CCE, Lucknow [2014] 47 taxmann.com 92 (New Delhi- CESTAT)
- There was error in filing ITR for the F.Y. 2015-16 and F.Y. 2016-17. A comprehensive reconciliation of the errors made with the actual invoices raised and the amounts received from customers. For further reference, the detailed reconciliation for FY 2015-16 and FY 2016-17 is submitted.
- The appellant is eligible for the cum-tax benefit in terms of Section 67(2) of the Finance Act.
- There is no basis for the accusation of suppressing any facts. It is important to reiterate that the Appellant has consistently cooperated fully throughout the assessment process, promptly providing all the requested documents and details to the learned officers. Consequently, the Appellant had no reason to and in fact has not deliberately withheld any facts from the revenue authorities. However, it is regrettable that the office of the learned officer misplaced the initial submissions made by the Appellant, leading to the issuance of an unjust Show Cause Notice.
- One of the pre-requisites of imposition of interest under the Section 75 is that there should be some amount of tax which has not been paid or short paid by the Appellant. It is submitted that when the demand itself is not sustainable, the question of imposition of interest does not arise.
- Further, penalty under Section 78 cannot be levied in case there is no liability of service tax. In this connection, reference can be made to the decision in case of Roots Multiclean Ltd vs. Commissioner of Central Excise, Coimbatore [2006 (1) STR 17 (Tri. - Chennai)] wherein it was decided that the question of levying penalty under section 78 of the Act does not arise where the liability of service tax does not exist. It is a settled position that something more than a mere failure to pay tax must be shown, i.e. the assessee must be aware that the tax was leviable and must have deliberately avoided payment. When, there was no suppression of facts by the Appellant and there was no contravention of any provisions of law with an intent to evade payment of tax and hence, penalty under Section 78 of the Act cannot be levied in the instant case.
- No penalty can be imposed in terms of Section 77(1)(a) of the Act since the appellant, due to reasons recorded above, is not liable to discharge the service tax liability and receipts from taxable turnover is not more than Rs. 9 lakhs, consequently is not liable to obtain registration under the Act.
- Furthermore, it is emphasised that no penalty can be imposed under Section 77(1)(c) of the Act, as the Appellant has diligently submitted all the requested details and documents as demanded by the learned officers during the assessment process. The Appellant has fully cooperated throughout the proceedings. On the other hand, it is the learned officers who have failed to consider the documents submitted by the Appellant and, in fact, misplaced them and deliberately ignored the submissions while passing the impugned Order.



Therefore, it is unjust for the learned officers to accuse the Appellant of non-submission.

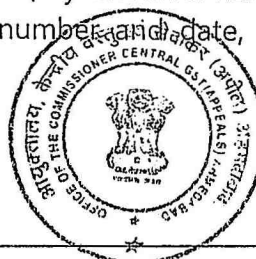
5. Personal hearing in the appeal matter was held on 22.02.2024. Sh. Deval Desai, Chartered Accountant appeared for personal hearing on behalf of the appellant. He reiterated the contents of written submission and requested to allow the appeal. He stated that the client is transporter. After availing abatement of 70% vide Notification No. 26/2012, the turnover comes to less than threshold. With threshold limit exemption there is no tax liability. There is also RCM as some of the clients are corporates.

6. 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. 1,79,945/-** against the appellant along with interest and penalties, in the facts and circumstance of the case is legal and proper or otherwise. The demand pertains to the period **F.Y 2015-16**.

6.1 The entire demand has been raised on the differential income of Rs. 12,41,003/- which was reflected in the ITR on which no service tax was paid. The appellant claim that they have rendered transportation of goods services as a GTA to M/s Mineral Enterprise. They claim that in terms of Notification No. 30/2012-Service Tax dated 20-Jun-2012, service tax liability under reverse charge is on the service recipient hence they are not liable to pay any tax. The remaining taxable services were provided to Trust and individuals, where the income is below the threshold limit of Rs. 10 lakhs, hence, they are not liable to obtain registration under Service Tax. They admitted that the consignment notes were issued for each transportation trip, however, inadvertently they failed to include the specific information regarding the "Person liable for paying service tax" in the consignment notes. Alternatively, they also claimed that if their services are not covered under GTA service, then it merits classification under transportation / Carting service covered under negative list prescribed in Section 66D(p) of the Finance Act, 1994. They submitted invoices, ITR, P&L Accounts, Bank Statements, Ledger Account of M/s. Mineral Enterprises as supporting documents.

6.2 I have gone through the documents submitted by the appellant. It is observed that the appellant in the P&L account of the F.Y. 2015-16 has shown the income of Rs.13,04,684/- under Truck Carting Income. Same amount is also reflected in Note-7 of the Financial Statement under 'Revenue from Goods Transportation'. From the invoices submitted, it is observed that some invoices were issued to the appellant by Transporters and Carting Contractors wherein consolidated amount was charged for various trips/feras. The amount charged is paid by the appellant and subsequently recovered from M/s. Mineral Enterprises. They also submitted reconciliation statement showing the amount charged by the appellant to various clients. As per the reconciliation statement majority of the services was rendered to specified person and only limited invoices amounting to Rs. 1,87,454/- was issued to individual. Whereas in some cases invoices are issued by the appellant themselves as a Carting Contractor to various other clients wherein consolidated amount is charged for various trips/feras.

6.3 In terms of proviso to Rule 4A of the Service Tax Rule, 1994, in case the provider of taxable service is a Goods Transport Agency, providing service to any person, in relation to transport of goods by road in a goods carriage, an invoice, a bill or, as the case may be, a challan shall include any document, by whatever name called, which shall contain the details of the consignment note number and date, gross weight of the



consignment and also contain other information as required under this sub-rule. Further, Rule 4B states that any GTA which provides service in relation to transport of goods by road in a goods carriage shall issue a consignment note to the recipient of service. The term "consignment note" means a document, issued by a goods transport agency against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains the name of the consignor and consignee, registration number of the goods carriage in which the goods are transported, details of the goods transported, details of the place of origin and destination, person liable for paying service tax whether consignor, consignee or the goods transport agency.

**6.4** On going through the invoices, I find that they are not consignment note as they do not contain the details that are required in the consignment note. Details like registration number of goods carriage in which the goods are transported, details of goods transported and person liable to pay service tax whether consignor, consignee or the goods transport agency are not mentioned in the invoice issued by the appellant. Thus, such invoices cannot be considered as consignment notes. Further, Rule 4B mandates every GTA to issue consignment notes containing the details mentioned therein. As the appellant has not issued consignment notes, they cannot be considered as a Goods Transport Agency. This fact is also admitted by the adjudicating authority at 18 of the impugned order.

**6.5** In terms of Notification No. 30/2012-ST dated 20.06.2012, under RCM, 100% liability to pay tax is on the service recipient, if the services are 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;*

In the present case, the appellant is not a Goods Transport Agency as they have not issued a consignment note, therefore the benefit claimed under above notification cannot be extended to them. Further, I find that the appellant is also not eligible for the abatement granted to GTA under Notification No.26/2012-ST.

**6.6** I, however, find that the appellant was rendering carting services or transportation services as is evident from their invoices which mentions their business activity as Carting Contractor and that amount charge was for carting charges. Moreover, the income received is also shown under 'Truck Carting Income'. It is observed that not all services rendered by way of transportation of goods by road are taxable, only the services provided by (i) a goods transportation agency; or (ii) courier agency are taxable. Services of Road Transport provided by all others are not taxable because they are covered by the Negative List u/s 66D(p)(i) of the Act. If any person providing service of



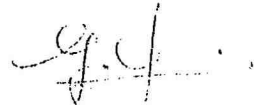


transportation of goods by road, and is neither covered under the statutory definition of GTA, nor under courier agency, then he is not liable to pay any service tax on such transportation. I find that the appellant was not rendering services of a transporter as a GTA hence are not liable to discharge any tax liability. In view of the above findings and discussion, I, find that the service tax demand of Rs.1,74,169/- on the differential income of Rs.12,41,003/- is not legally sustainable. When there is no demand, question of recovering the interest and imposition of penalty does not arise.

7. In light of above discussion and findings, I set-aside the impugned order.

8. 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.



(ज्ञानचंद्रजैन)

आयुक्त (अपील्स)

Date: 27.02.2024

Attested



Superintendent (Appeals)  
CGST, Ahmedabad

By RPAD/SPEED POST

To,  
M/s. Pushpaben Patel,  
12-Green Palace Flat,  
Saijpur Bogha,  
Ahmedabad-382345

Appellant

The Assistant Commissioner  
CGST, Division-I,  
Ahmedabad North

Respondent

Copy to:

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



