



## आयुक्त (अपील) का कार्यालय,

Office of the Commissioner (Appeal);

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

07926305065-

टेलैफैक्स 07926305136



DIN: 20230764SW0000011589

### स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/270/2023/3979 - 83

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-60/2023-24  
दिनांक Dated : 21.07.2023 जारी करने की तारीख Date of Issue 28.07.2023

आयुक्त (अपील) द्वारा पारित

Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST/WT07/HG/454/2022-23 दिनांक: 30-09-2022, issued by Assistant Commissioner, CGST, Division VII, Ahmedabad-North

घ अपीलकर्ता का नाम एवं पता Name & Address

#### 1. Appellant

M/s Neela Ashish Patel  
A-5, Dev Bunglows,  
Science City Road, Sola,  
Ahmedabad - 380060

#### 2. Respondent

The Deputy Commissioner,  
CGST, Division VII, Ahmedabad North  
4th Floor, Shajanand Arcade, Nr. Helmet Circle,  
Memnagar, Ahmedabad - 52

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 :

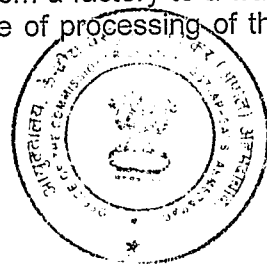
#### Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा 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।

(i) 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 :

(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।

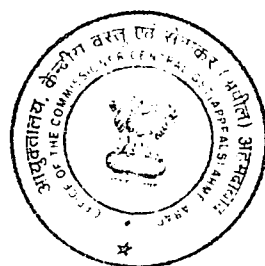
The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004
- (a) 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 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 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 अनुसूचि-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.

- (35) 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) 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.

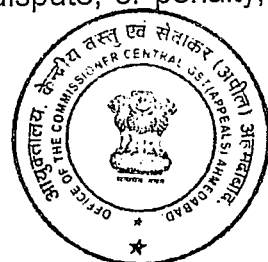
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (lxxxviii) amount determined under Section 11 D;
- (lxxxix) amount of erroneous Cenvat Credit taken;
- (xc) 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."



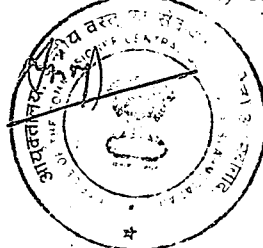
ORDER-IN-APPEAL

The present appeal has been filed by M/s. Neela Ashish Patel, A-5, Dev Bungalows, Science City Road, Sola, Ahmedabad – 380060 (hereinafter referred to as “the appellant”) against Order-in-Original No. CGST/WT07/HG/454/2022-23 dated 30.09.2022 (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”).

2. Briefly stated, the facts of the case are that the appellant are holding PAN No. ATKPP6038N. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2015-16, it was noticed that the appellant had earned an income of Rs. 21,17,539/- during the FY 2015-16, which was reflected under the heads “Sales / Gross Receipts from Services (Value from ITR)” or “Total amount paid / credited under Section 194C, 194I, 194H, 194J (Value from Form 26AS)” filed with the Income Tax department. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but have neither obtained Service Tax registration nor paid the applicable service tax thereon. The appellant were called upon to submit copies of required documents for assessment for the said period. However, the appellant had not responded to the letters issued by the department.

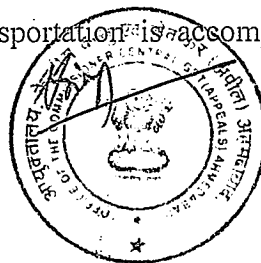
2.1 Subsequently, the appellant were issued Show Cause Notice No. CGST/A'bad-North/Div-VII/AR-IV/TPD/UNREG 15-16/58/20-21 dated 17.12.2020 demanding Service Tax amounting to Rs. 3,07,043/- for the period FY 2015-16, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 77(1)(a), Section 77(1)(c), Section 77(2) and Section 78 of the Finance Act, 1994. The SCN also proposed recovery of un-quantified amount of Service Tax for the period FY 2016-17 & FY 2017-18 (up to Jun-17).

2.2 The Show Cause Notice was adjudicated, ex-parte, vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 3,07,043/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2015-16. Further (i) Penalty of Rs. 3,07,043/- was also imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1)(a) and Section 77(1)(c) of the Finance Act, 1994; and (iii) Penalty of Rs. 5,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994 for not submitting documents to the department when called for.



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

- The appellant engaged in providing carting service.
- They had neither received Show Cause Notice nor any letters as mentioned in the impugned order. The adjudicating authority by sending single letter dated 12.09.2022, which also not received by them, three personal hearings on 15.09.2022, 19.09.2022 and 21.09.2022 were arranged, which is clearly violation of natural justice. In this regard, they relied upon judgment of Hon'ble Gujarat High Court in the matter of Regent Overseas Pvt. Ltd. Vs. Union of India and judgment of Hon'ble Karnataka High Court in the matter of IPC Packaging Company Pvt. Ltd. Vs. Addl. CC, ICD, Bangalore.
- The impugned order has been passed without considering the fact that services provided by them was covered under negative list of services, it is wrong to assume that amount declared in ITR becomes taxable under service tax. The show cause notice and impugned order issued merely on the basis of amount reflected on 26AS/ITR, therefore, liable to be quashed. In this regard, they relied upon the following case laws:
  - a) M/s. Amrish Rameshchandra Shah Vs. Union of India and others (TS-77-HC-2021Bom.-ST)
  - b) Sharma Fabricators & Erectors Pvt. Ltd. [2017 (5) GSTL 96 (Tri. - All.)]
  - c) Kush Constructions Vs. CGST NACIN [2019 (24) GSTL 606 (Tri. - All.)]
  - d) Alpa Management Consultants P. Ltd. Vs. CST [2007 (6) S.T.R. 181 (Tri.-Bang.)]
- Supplier of bricks wants to transport their bricks to the construction sites. Such sale of bricks by suppliers may be with transportation or without transportation. If price of such transaction of sale of bricks is fixed including transportation, supplier issues invoice including transportation. In such case if supplier of bricks contacts transport operator to transport the goods, the transport operator raises his invoice on suppliers end of the each month. However, if such sale price of bricks by plant is without transportation, a transport operator is contacted and such contractor directly raise his invoice on buyer of the goods for transportation of goods.
- In all such types of transactions, transport operator never issues any documents at time of transportation of goods. Entire transportation is accompanied by the document



called Challan issued by Supplier of bricks. On each month end, Supplier of bricks and Transport Operator confirms the trips undertaken during the month and Transport Operator raises monthly invoice on the supplier or Buyer of the bricks, as the case may be.

- The appellant is engaged in transportation of goods by road which are not taxable as covered in Negative List in terms of Section 66D(p)(i) of the Finance Act, 1994, no service tax is payable on the same. Transportation of goods per se is a service in negative list and no service tax is to be levied on mere transportation of goods. Further, service of GTA only is subject to tax and to consider any person as GTA, it is prerequisite and indispensable that the service provider issues the consignment notes, no consignment note or bill or any other document is being issued. Even transportation is being carried out with document (Challan) issued by the seller of the goods. Thus they have not considered as "Goods Transport Agency" (GTA) and their services were merely "Transportation of goods by road" which was not taxable under Section 66D(p). In this regard, they relied upon the following case laws:

(i) Lakshminarayana Mining Company v. Commr. of Central Tax, Bengaluru South GST [2019 (27) G.S.T.L. 745 (Ti. - Bang.)].

(ii) In the case of U.P. State Bridge Corporation Ltd. v. Commr. of C. Ex. & S.T. Lucknow [2017 (6) G.S.T.L. 523 (Tri. - All.)].

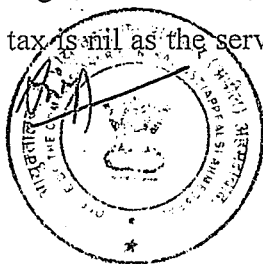
(iii) C. Ex., Rohtak v. Haryana Co-op Sugar Mills [2017 (5) G.S.T.L.271 (Tri. - Chan.)].

- They appellant submitted a copy of Affidavit, inter alia, stating that they were engaged in transportation of goods by road and as during the transportation. They carried document which was issued by supplier of goods and hence there was no need to issue any consignment note or any such document by them and they did not issue any document for transportation. They were merely transporting goods as and when directed by the supplier of goods, they did not take any responsibility in such transport.
- The show cause notice has been issued and demand of service tax has been confirmed by invoking the extended period under Section 73(1) of the Finance Act, 1994, however, there is not any evidence how the appellant has suppressed any fact. The facts that the appellant was not liable to pay service tax. Therefore, charging suppression and invoking extended period and levying service tax is not valid.



- Further, even if it is assumed that service tax is payable, even then the value of taxable services will be considered after considering the abatement given under Notification No. 26/2012- ST dated 20-06-2012 i.e. of 70% of total value, which is ignored in impugned order.
- Further, even if service tax is payable, the gross amount shall be considered as inclusive of tax in terms of Section 67(2) of the Finance Act, 1994. Similar view was taken by the Apex court in Commissioner v. Advantage Media Consultant [2009 (14) S.T.R. 149(S.C.)] and Gem Star Enterprises (P) Ltd. v. Commissioner of C. Ex. & Cus. Calicut [2007 (7) S.T.R. 342 (Tri. - Bang.)].
- Further, even if it is assumed that service tax is leviable under GTA, even then in terms of Rule 2(1)(d)(B) the liability to pay tax on the services provided by GTA is of the recipient of services. However, the impugned OIO has been issued ignoring the said facts.
- They are eligible for threshold exemption benefit under Notification No. 33/2012-ST. As per above submission, 70% value is exempt under Notification 26/2012-ST and 30% is "taxable" which is again exempt to the extent of Rs. 10 Lacs under Notification No. 33/2012-ST.
- Along with appeal memorandum the appellant submitted the following documents for verification purpose.
  - i. Copy of Income Tax Return (ITR) of FY 2015-16
  - ii. Copy of Profit & Loss Account and Balance Sheet for the FY 2015-16
  - iii. Copy of Carting Income Ledger for the FY 2015-16
  - iv. Sample copy of invoices issued during the F.Y. 2015-16
  - v. Copy of FORM 26AS for the F.Y. 2015-16
  - vi. Copy of Income Tax Return (ITR) of F.Y. 2014-15
  - vii. Copy of FORM 26AS for the F.Y. 2014-15

4. Personal hearing in the case was held on 14.07.2023. Shri Keyur Kamdar, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He reiterated submission made in appeal memorandum. He submitted that the appellant received carting income for the transport of goods, mainly for body corporate. Since the appellant did not issue any consignment note, his service falls under the negative list. Even, if it is considered under GTA, the liability of the appellant to pay service tax is nil as the service was provided to the



customers who are either limited company or partnership firms, who have to pay service tax on RCM in such case. Therefore, he requested to set aside the impugned order.

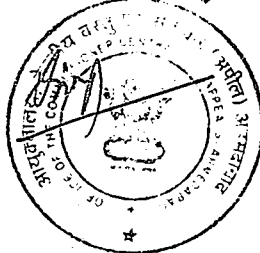
5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, during the course of personal hearing and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand 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 FY 2015-16.

6. I find that in the SCN in question, the demand has been raised for the period FY 2015-16 based on the Income Tax Returns filed by the appellant. Except for the value of "Sales of Services under Sales / Gross Receipts from Services" provided by the Income Tax Department, no other cogent reason or justification is forthcoming from the SCN for raising the demand against the appellant. It is also not specified as to under which category of service the non-levy of service tax is alleged against the appellant. Merely because the appellant had reported receipts from services, the same cannot form the basis for arriving at the conclusion that the respondent was liable to pay service tax, which was not paid by them. In this regard, I find that CBIC had, vide Instruction dated 26.10.2021, directed that:

*"It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.*

*3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner /Chief Commissioner (s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee."*

6.1 In the present case, I find that letters were issued to the appellant seeking details and documents, which were allegedly not submitted by them. However, without any further inquiry or investigation, the SCN has been issued only on the basis of details received from the Income Tax department, without even specifying the category of service in respect of which service tax is sought to be levied and collected. This, in my considered view, is not a valid ground for raising of demand of service tax.





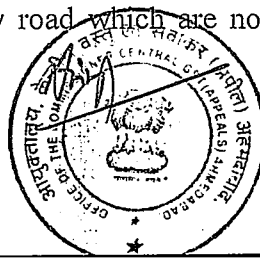
7. As regard, the contention of the appellant that the adjudicating authority by sending single letter dated 12.09.2022 three personal hearings were arranged, which is clearly violation of natural justice, I find that the adjudicating authority has scheduled personal hearing by specifying 3 (three) different dates i.e. 15.09.2022, 19.09.2022 and 21.09.2022 in the single letter / notice dated 12.09.2022. The appellant also contended that they have not received the said letter of personal hearing. In this regard, I find that the adjudicating authority given three dates of personal hearing in one notice and has considered the same as three opportunities. I also find that there is no mentioned about any adjournment sought by the appellant.

7.1 As per Section 33A(2) of the Central Excise Act, 1944, as made applicable to Service Tax vide Section 83 of the Finance Act, 1994, when a personal hearing is fixed, it is open to a party to seek time by showing sufficient cause and in such case, the adjudicating authority may grant time and adjourn the personal hearing by recording the reason in writing. Not more than three such adjournments can be granted. Since such adjournments are limited to three, the hearing would be required to be fixed on each such occasion and on every occasion when time is sought and sufficient cause is made out, the case would be adjourned to another date. However, the adjudicating authority is required to give one date a time and record his reasons for granting adjournment on each occasion. It is not permissible for the adjudicating authority to issue one consolidated notice fixing three dates of hearing, whether or not the party asks for time, as has been done in the present case.

7.2 It is further observed that by notice for personal hearing on three dates and absence of the appellant on those dates appears to have considered as grant of three adjournments by the adjudicating authority. In this regard, I find that the Section 33A(2) of the Central Excise Act, 1944 provides for grant of not more than 3 adjournments, which would envisage four dates of personal hearing and not three dates. The similar view has been taken by the Hon'ble High Court of Gujarat in the case of Regent Overseas Private Limited and others Vs. Union of India and others reported in 2017 (3) TMI 557 – Gujarat High Court.

7.3 In view of the above, I find that the adjudicating authority was required to give adequate and ample opportunity to the appellant for personal hearing and it is only thereafter, the impugned order was required to be passed. Thus, it is held that the impugned order passed by the adjudicating authority is clearly in breach of the principles of natural justice.

8. On merit of the case, it is observed that the main contention of the appellant are that (i) they were engaged in transportation of goods by road which are not taxable as covered in



Negative List in terms of Section 66D(p)(i) of the Finance Act, 1994; (ii) even if it is assumed that service tax is payable, even then the value of taxable services will be considered after considering the abatement given under Notification No. 26/2012- ST dated 20-06-2012 i.e. of 70% of total value, which is ignored in impugned order; and (iii) they are eligible for threshold exemption benefit under Notification No. 33/2012-ST.

8.1 It is also observed that the adjudicating authority has passed the impugned order ex-parte.

9. For ease of reference, I hereby reproduce the relevant provisions of Section 66D of the Finance Act, 1994; definition of GTA as provided in Section 65(26) of the Finance Act, 1994 and relevant provision of Rule 4B of the Service Tax Rules, 1994, which are read as under:

***"SECTION 66D. Negative list of services.—***

*The negative list shall comprise of the following services, namely :-*

(a) ..... (b) .... ..

(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;"

(ii) [ \* \* \* \* ]

(iii) by inland waterways;"

*"Section 65(26) " goods transport agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called;"*

*"Rule 4B. Issue of consignment note.- Any goods transport agency 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:*

*Explanation.- For the purposes of this rule and the second proviso to rule 4A, "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."*

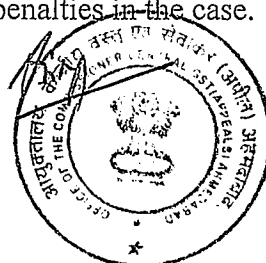
10. On plain reading of the above provisions, it is clear that issuance of consignment note is the pre-requisite condition for the transporter to fall under the definition of GTA and service tax is not required to be paid by the transporters who does not fall within the definition of GTA and does not issue consignment note.

11. In the present case, on the verification of the Carting Invoices submitted by the appellant, I find that the invoices issued by the appellant cannot equated with the "Consignment Note" as the same not contain any details viz. 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, etc. Therefore, the appellant not falls under the definition of the Goods Transport Agency. I also find that the appellant also submitted an Affidavit, inter alia, stating that they were engaged in transportation of goods by road and as during the transportation, they carried document which was issued by supplier of goods and hence there was no need to issue any consignment note or any such document by them and they did not issue any document for transportation.

12. In view of the aforesaid discussion, I am of the considered view that the service provided by the appellant falls under Negative List of Services as provided under Section 66D(p)(i) of the Finance Act, 1994 and the appellant not required to pay any service tax on the income received by them during the FY 2015-16.

13. I also find that even if it is assumed that the appellant was GTA and service tax is payable, the taxable value of the appellant for the FY 2015-16, after considering the abatement given under Notification No. 26/2012- ST dated 20.06.2012, was Rs. 6,35,262/- (30% of Rs. 21,17,539/-) and the said amount is remain within the threshold limit of exemption as per Notification No. 33/2012-ST dated 20.06.2012 for which the appellant was very well eligible as their taxable value for the FY 2014-15 was Rs. 4,80,270/-, i.e. below Rs. 10 lakh, as per the ITR submitted by the appellant.

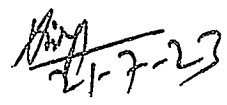
14. In view of above, I hold that the impugned order passed by the adjudicating authority, confirming demand of Service Tax from the appellant for the FY 2015-16, is not legal and proper and deserves to be set aside. Since the demand of Service Tax fails, there does not arise any question of charging interest or imposing penalties in the case.




15. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

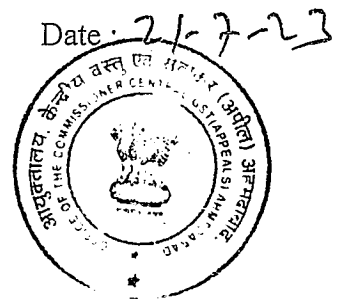
16. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

  
(Shiv Pratap Singh)  
Commissioner (Appeals)

Attested

  
(R. C. Maniyar)  
Superintendent(Appeals),  
CGST, Ahmedabad



**By RPAD / SPEED POST**

To,

M/s. Neela Ashish Patel,  
A-5, Dev Bungalows,  
Science City Road, Sola,  
Ahmedabad – 380060

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, CGST, Division VII, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North  
(for uploading the OIA)

- 5) Guard File
- 6) PA file