



सत्यमेव जयते

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- टेलीफैक्स 07926305136



DIN: 20230864SW000000D405

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/690/2023-APPEAL /14632 - 141

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-70/2023-24
 दिनांक Date : 31-07-2023 जारी करने की तारीख Date of Issue 17.08.2023

आयुक्त (अपील) द्वारा पारित
 Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)

ग Arising out of Order-in-Original No. 72/ADC/MR/2022-23 दिनांक: 22.11.2022, issued by
 Additonal Commissioner, CGST, Ahmedabad-North

घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s. Narandas Mulchanbhai Mukhi, Ground Floor, Navbharat Mill
 Compound, Naroda Road, Naroda, Ahmedabad-380025

2. Respondent

The Additional Commissioner, CGST, Ahmedabad North 1st Floor, Custom
 House, Navrangpura, Ahmedabad - 380009

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 :

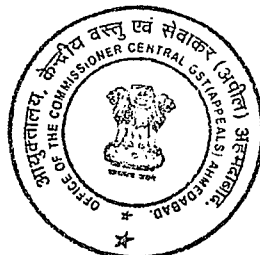
भारत सरकार का पुनरीक्षण आवेदन :
 Revision application to Government of India :

(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, 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 प्रक्रिया 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 दिनोंक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

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

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

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



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

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

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

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (7) 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:

- (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 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."



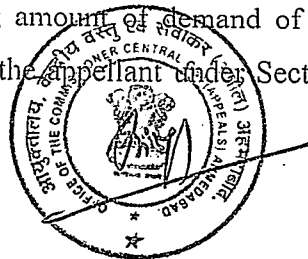
ORDER-IN-APPEAL

The present appeal has been filed by M/s. Narandas Mulchanbhai Mukhi, Ground Floor, Navbharat Mill Compound, Naroda Road, Naroda, Ahmedabad – 380025 (hereinafter referred to as “the appellant”) against Order-in-Original No. 72/ADC/MR/2022-23 dated 22.11.2022 issued on 23.11.2022 (hereinafter referred to as “the impugned order”) passed by the Additional Commissioner, Central GST& Central Excise, Ahmedabad North (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, the facts of the case are that the appellant were holding PAN No. AAHFN5302M. 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. 4,12,11,421/- 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 had neither obtained Service Tax registration nor paid the applicable service tax thereon. The appellant were called upon to submit copies of Balance Sheet, Profit & Loss Account, Income Tax Return, Form 26AS, 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. STC/15-253/OA/2021 dated 09.06.2021 demanding Service Tax amounting to Rs. 59,75,656/- 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).

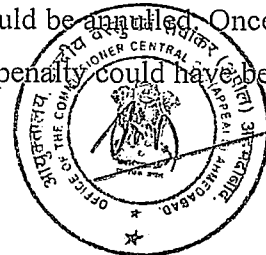
2.2 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 3,74,391/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2015-16 after allowing 70% abatement from total transportation income of Rs. 86,06,683/- as per Notification No. 26/2012-ST dated 20.06.2012 as amended vide Notification No. 8/2016-ST dated 01.03.2016. The adjudicating authority has dropped the remaining amount of demand of Service Tax. Further, (i) Penalty of Rs. 3,74,391/- was 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) of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1)(c) of the Finance Act, 1994; and (iii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the following grounds:

- The appellant is engaged in the business of Transportation of Goods by Road. It is called GTA service in terms of Notification No. 30/2012 dated 20.06.2012, read with Section 658(26) of the Finance Act, 1994.
- During the period under reference all the revenues earned by the appellant were covered under reverse charge vide Notification No. 30/2012-ST and they were not liable to collect and pay Service tax. In terms of Section 65(26) of the Finance Act, 1994, the services provided by the appellant is GTA service and the service recipient is liable to pay service tax in terms of Notification No.30/2012 dated 20.06.2012. Thus, the appellant was not liable to pay service tax on GTA services provided by them.
- As there was no service tax liability on the services provided by the appellant, no interest can be charged under Section 75 of the Finance Act, 1994.
- As there was no service tax liability on the services provided by the appellant, the appellant was not required to get registration under service tax and not liable to impose penalty under Section 77(1)(a), Section 77 (1)(c), and Section 77 (2) of the Finance Act, 1994.
- Penal provisions under Section 78 of the Finance Act, was to take into consideration penalties levied on those appellant who have failed to make service tax payments due to reasons that are deemed to be unscrupulous by nature. This means that the penalties levied will be in accordance with cases where the avoidance of service tax payment involves fraudulent activities such as the concealment of information or facts, collusion, willingly furnishing false statements or the violation of any provisions rules laid out by the Act. The case of the appellant is squarely covered by the decision of the jurisdiction high court and hence demand raised would be annulled. Once the quantum itself has been settled in favour of the appellant, no penalty could have been levied.



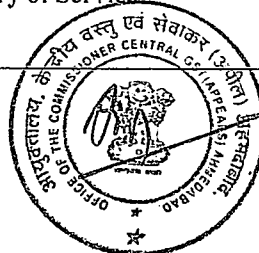
4. Personal hearing in the case was held on 07.07.2023. Shri Nisit B. Thakkar, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He submitted additional written submission. He reiterated submission made in appeal memorandum and those in the additional written submission. He submitted that the adjudicating authority has dropped part of the demand but has confirmed remaining part of the demand. He submitted that the appellant provided services for transport of milk and food grains which are exempted. Therefore, he requested to set aside the impugned order.

4.1 The appellant in their additional submission dated 07.07.2023, inter alia, reiterated the submission made in the appeal memorandum and further submitted following grounds:

- They have engaged in the business of transportation of goods by road. The covered under two service categories. (i) Goods Transport Agency Service – In case of transportation booking received from their customers they issue ‘consignment notes’ and those services are considered as “Goods Transport Agency Services”; (ii) Transportation of Goods by Road – They provided services to other GTAs, who issues consignment notes to their customers. As, they do not issue consignment notes, there are not considered as GTA and all such type of services are not taxable by virtue of Negative list under Section 66D(p)(i) of the Finance Act.
- As regard, the income of Rs. 64,67,919/- received from M/s, Goodluck Transport Co., the appellant submitted that the said income is related to transportation of Milk and the service provided to another GTA and thus service provided by them were exempted as per Sr. No. 21 of the Notification No. 25/2012-ST dated 20.06.2012. In support of their claim, they have also submitted declaration from M/s. Goodluck Transport Co. certifying that they have engaged in Transportation business and they received service from the appellant; Account ledger maintained by M/s. M/s. Goodluck Transport Co.; copy of Form 26AS; Account ledger for M/s. Goodluck Transport Co. maintained by the appellant and sample invoices and copies of consignment notes issued by M/s. Goodluck Transport Co..
- The appellant have also submitted bifurcation and ledger of Cartage Income of Rs. 15,22,288/- and Cash Cartage Income of Rs. 6,16,476/-, which is as under:

Cartage Income

Sr. No.	Name of the party	Amount received	Category of Service
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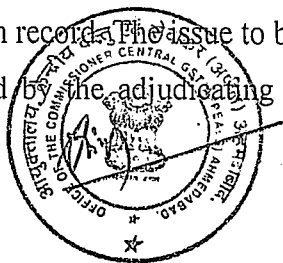
		(in Rs.)	
1	Armania Agro Foods	341930	Transportation of Food Grain
2	Arvind Ltd. (PAN: AABCA2398D)	815254	GTA falls under RCM
3	Poojan Marketing (PAN: AAWPP1146Q)	191960	Transportation of Oil
4	Mahesh Associates (PAN: ABBFM3605P)	34100	GTA falls under RCM
5	Speed Carriers Pvt. Ltd.	13592	GTA to another GTA
6	Janseva Parivahan Roadline	4900	GTA to another GTA
7	West Coast Logistics	480	GTA to another GTA
8	Lube Services	54250	GTA
9	Sadard Corporation	4098	GTA
10	Sandeep Garg	4800	GTA
11	Shubh Enterprise	11000	GTA
12	Bhanushali Damji Vishram	384	GTA
13	B.M. Automobiles & Sons	45540	GTA
		1522288	

Cash Cartage Income

Sr. No.	Name of the party	Amount received (in Rs.)	Category of Service
1	Armania Agro Foods	109635	Transportation of Food Grain
2	Amco Agarow	27125	Transportation of Food Grain
3	Sheth Transport	40725	GTA to another GTA
4	Amar Shakti Transport	108966	GTA to another GTA
5	Chaudhary Transport	14000	GTA to another GTA
6	Azad Golden Transport	190325	GTA to another GTA
7	Khodiyar Transport	53450	GTA to another GTA
8	M P Bombay Roadlines	23250	GTA to another GTA
9	Lakhana Transport	39500	GTA to another GTA
10	Suprem Trasport	9500	GTA to another GTA
		616476	

- In support of their claim, the appellant also submitted copy of income ledger and sample copies of invoices issued to the customers.

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 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. It is observed that the main contentions of the appellant are that all the revenues earned by them were either falls under Negative list as they have not issued consignment note or covered under reverse charge mechanism vide Notification No. 30/2012-ST / exempted under Notification No. 25/2012-ST dated 20.06.2012 and they were not liable to collect and pay Service tax.

6.1 It is also observed that the adjudicating authority has in the impugned order while confirming the demand of service tax on income of Rs. 86,06,683/-, held / discussed as under:

"29. As regards, the remaining transportation income as detailed below, I find that the said assessee has not submitted any bifurcation/ledger of Cartage Income of Rs. 15,22,288/- and Cash Cartage Income of Rs. 6,16,476/-. I also find that the said assessee has not produced any work order, documents to prove the legal status of Goodluck Transport Co. from whom they have received transportation income of Rs. 64,67,919/-. Hence, in absence of documents, the transportation income of Rs. 86,06,683/- cannot be treated as transportation income received from a body corporate established, by or under any law; partnership firm whether registered or not under any law including association of persons; a factory registered under or governed by the Factories Act, 1948 (63 of 1948) and any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944)."

7. For ease of reference, I reproduce the relevant provision for reverse charge mechanism as provided under Notification No. 30/2012-ST dated 20.06.2012 as amended, relevant provision of Notification No. 25/2012-ST dated 20.06.2012; definition of GTA as provided under Section 65B(26) of the Finance Act, 1994 and relevant provision of Negative List as contained in Section 66D(p) of the Finance Act, 1994, which reads as under:

"Notification 30/2012 Service Tax dated 20.6.2012 GSR.....(E).-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)
- (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,—
- any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
 - 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;
 - any co-operative society established by or under any law;
 - any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;
 - any body corporate established, by or under any law; or
 - any partnership firm whether registered or not under any law including association of persons;”

“Notification No. 25/2012-Service Tax dated 20th June, 2012

G.S.R. 467(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification No. 12/2012- 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. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

1 ...

2... ..

21. Services provided by a goods transport agency, by way of transport in a goods carriage of,-

- agricultural produce;
- goods, where gross amount charged for the transportation of goods on a consignment transported in a single carriage does not exceed one thousand five hundred rupees;
- goods, where gross amount charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred fifty;
- foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages;
- chemical fertilizer and oilcakes;
- newspaper or magazines registered with the Registrar of Newspapers;
- relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or
- defence or military equipments;”

22. Services by way of giving on hire —

- to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or
- to a goods transport agency, a means of transportation of goods;”

Section 65B(26) of the Finance Act, 1994

“(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;”



"SECTION 66D. Negative list of services.—

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

- (p) *services by way of transportation of goods—*
 (i) *by road except the services of—*
 (A) *a goods transportation agency; or*
 (B) *a courier agency;”*

7.1 Based on the legal provision above, I find that as per the provisions of Notification No. 30/2012-ST dated 20.06.2012, if the service recipient falls under any of the specified 06 categories of service recipients as prescribed under Notification No. 30/2012-ST dated 20th June 2012, then the service recipients were liable to pay the Service Tax under Reverse Charge Mechanism. I also find that GTA service provided for Food Grain and Milk is exempted as per the provisions of Sr. No. 21(d) Notification No. 25/2012-ST dated 20.06.2012 and also service provided by GTA to another GTA is exempted as per the provisions of Sr. No. 22(b) Notification No. 25/2012-ST dated 20.06.2012.

7.2 I also find that the adjudicating authority has confirmed the demand of service tax on the transportation income of Rs. 64,67,919/- received from M/s. Goodluck Transport Co.; Cartage Income of Rs. 15,22,288/-; and Cash Cartage Income of Rs. 6,16,476/-, as the appellant have not produced any documents, which was now provided by the appellant before this authority. I find that the adjudicating authority has confirmed the demand of service tax, without considering the legal provisions and verification of the documents. If the documents were not submitted by the appellant, the adjudicating authority was required to call for the further documents from the appellant, which was not done by the adjudicating authority.

7.3 On verification of the ledgers of the transportation income of Rs. 64,67,919/- received from M/s. Goodluck Transport Co.; Cartage Income of Rs. 15,22,288/-; and Cash Cartage Income of Rs. 6,16,476/- and related invoices and sample consignment notes issued by the appellant and / or issued by the another GTA, I find that Service provided to M/s. Goodluck Transport Co. are exempted as per Sr. No. 22(b) of the Notification No. 25/2012-ST. In respect of Cartage Income the income of Rs. 3,12,032/- out of total income of Rs. 15,22,288/- were taxable and remaining income were either exempted as per Sr. No. 21(d) and 22(b) of Notification No. 25/2012-ST or falls under RCM as per Notification No. 30/2012-ST. In respect of Cash Cartage Income of Rs. 6,16,476/-, I find that the said income also exempted as per Sr. No. 21(d) and 22(b) of Notification No. 25/2012-ST. The party wise details for the same is as under:



Income received from M/s. Goodluck Transport Co.

Sr. No.	Name of the party	Amount received (in Rs.)	Category Service of	Taxability
1	Goodluck Transport Co.	6467919	GTA to another GTA	Exempted as per Sr. No. 22(b) of Notification No. 25/2012-ST
	Total	6467919		

Cartage Income

Sr. No.	Name of the party	Amount received (in Rs.)	Category Service of	Taxability
1	Armania Agro Foods	341930	Transportation of Food Grain	Exempted as per Sr. No. 21(d) of Notification No. 25/2012-ST
2	Arvind Ltd. (PAN: AABCA2398D)	815254	GTA	Falls under RCM as per Notification No. 30/2012-ST
3	Poojan Marketing (PAN: AAWPP1146Q)	191960	Transportation of Oil Barrels	Taxable
4	Maresh Associates (PAN: ABBFM3605P)	34100	GTA	Falls under RCM as per Notification No. 30/2012-ST
5	Speed Carriers Pvt. Ltd.	13592	GTA to another GTA	Exempted as per Sr. No. 22(b) of Notification No. 25/2012-ST
6	Janseva Parivahan Roadline	4900	GTA to another GTA	Exempted as per Sr. No. 22(b) of Notification No. 25/2012-ST
7	West Coast Logistics	480	GTA to another GTA	Exempted as per Sr. No. 22(b) of Notification No. 25/2012-ST
8	Lube Services	54250	GTA	Taxable (being status of the person / Pan not provided)
9	Sadard Corporation	4098	GTA	Taxable (being status of the person / Pan not provided)
10	Sandeep Garg	4800	GTA	Taxable (being status of the person / Pan not provided)
11	Shubh Enterprise	11000	GTA	Taxable (being status of the person / Pan not provided)
12	Bhanushali Damji Vishram	384	GTA	Taxable (being status of the person / Pan not provided)
13	B.M. Automobiles & Sons	45540	GTA (Transportation of Oil Barrels)	Taxable (being status of the person / Pan not provided)
	Total	1522288		

Cash Cartage Income

Sr. No.	Name of the party	Amount received (in Rs.)	Category Service of	Taxability
1	Armania Agro Foods	109635	Transportation of Food Grain	Exempted as per Sr. No. 21(d) and 22(b) of Notification No. 25/2012-ST
2	Amco Agarow	27125	Transportation of Food Grain	Exempted as per Sr. No. 21(d) and 22(b) of Notification No. 25/2012-ST
3	Sheth Transport	40725	GTA to another GTA	Exempted as per Sr. No. 22(b) of Notification No. 25/2012
4	Amar Shakti Transport	108966	GTA to another GTA	Exempted as per Sr. No. 22(b) of Notification No. 25/2012
5	Chaudhary Transport	14000	GTA to another GTA	Exempted as per Sr. No. 22(b) of Notification No. 25/2012-ST
6	Azad Golden Transport	190325	GTA to another GTA	Exempted as per Sr. No. 22(b) of Notification No. 25/2012-ST
7	Khodiyar Transport	53450	GTA to another GTA	Exempted as per Sr. No. 22(b) of Notification No. 25/2012-ST



8	M P Bombay Roadlines	23250	GTA to another GTA	Exempted as per Sr. No. 22(b) of Notification No. 25/2012-ST
9	Lakhana Transport	39500	GTA to another GTA	Exempted as per Sr. No. 22(b) of Notification No. 25/2012-ST
10	Suprem Trasport	9500	GTA to another GTA	Exempted as per Sr. No. 22(b) of Notification No. 25/2012-ST
	Total	616476		

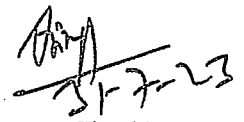
8. In view of the above discussion, I find that the income of Rs. 3,12,032/- for the FY 2015-16 is taxable under the category of GTA as the appellant issued consignment note. However, I find that during the FY 2014-15, the appellant provided the taxable service below Rs. 10 lakh, as per the Profit & Loss Account, Income Ledgers and consignment notes submitted by the appellant for the FY 2014-15. Thus, I find that the appellant is also eligible for the benefit of threshold limit up to Rs. 10 lakh in the FY 2015-16. Thus, the appellant is not liable to pay any service tax on the income of Rs. 3,12,032/- also.

9. In view of above discussion, I hold that the impugned order passed by the adjudicating authority, confirming demand of Service Tax from the appellant for their income received during 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.

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


11. 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.

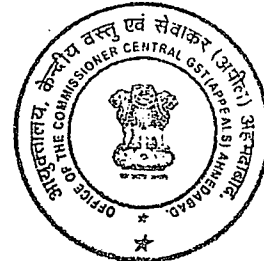


(Shiv Pratap Singh)
Commissioner (Appeals)

Attested


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

Date : 31-7-23



By RPAD / SPEED POST

To,
M/s. Narandas Mulchanbhai Mukhi,

Appellant

Ground Floor, Navbharat Mill Compound,
Naroda Road, Naroda,
Ahmedabad – 380025

The Additional Commissioner,
CGST& Central Excise,
Ahmedabad North

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Additional Commissioner, CGST& C. Excise, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North
(for uploading the OIA)

- ✓ 5) Guard File
- 6) PA file

