

<b>केन्द्रीय कर आयुक्त (अपील)</b>	
<b>O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,</b>	
सत्यमेव जयते	केन्द्रीय कर शुल्क भवन
Floor, Central Excise Building,	
Near Polytechnic,	
सातवीं मजिल, पोलिटिकनिक के पास	
Ambavadi, Ahmedabad-380015	
आम्बावाडी, अहमदाबाद-380015	
☎ 079-26305065	☎ 079-26305136

क फाइल संख्या : File No : **V2(ST)0299/A-II/2016-17** / 8030 10 835 h  
 ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-001-APP-132-17-18**  
 दिनांक Date : 27-10-2017 जारी करने की तारीख Date of Issue 22-11-17

**श्री उमा शंकर**, आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker**, Commissioner (Appeals)

ग Arising out of Order-in-Original No **SD-06/11/AC/Hari krishna Infra/16-17** Dated **27.01.2017** Issued by Assistant Commr STC, Service Tax, Ahmedabad

ध अपीलकर्ता का नाम एवं पता  
Name & Address of The Appellants

**M/s. Harikrishna Infrastructure**  
**Ahmedabad**

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-  
 Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

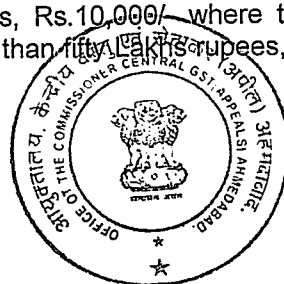
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
 Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैनटल हास्पिटल कम्पाउण्ड, मेधाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad - 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (1) के अंतर्गत निर्धारित फार्म एस.टी- 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपर 5 लाख या उससे कम है वहाँ रूपर 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपर 5 लाख या 50 लाख तक हो तो रूपर 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपर 50 लाख या उससे ज्यादा है वहाँ रूपर 10000/- फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompany ed by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of



crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.

(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा A2!9k केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjudication authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 43 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल हैं -

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

⇒ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होंगे।

4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

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.

⇒ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

4(1) इस संदर्भ में, 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।

4(1) 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

This appeal has been filed by M/s Harikrishna Infrastructure, 14, Harshad Colopny, Part-1, Thakkar Bappanagar, B/h India Colony, Thakkar Bappanagar, Ahmedabad [for short-"the appellant"] against Order-in-Original No.SD-06/11/AC/Karikrishna Infr/16-17 dated 27.01.2017 [impugned order] passed by the Assistant Commission, Service Tax, Division-VI, Ahmedabad [adjudicating authority]

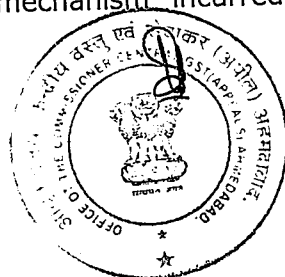
2. The facts of the case is that based on Audit objection, a show cause notice dated 30.07.2015 was issued to the appellant, alleging that they had not paid service tax on services of "Goods Transport Agency" under reverse charge mechanism towards the transportation expenses for receipt of goods and material incurred during the period from 2010-11 to 2013-14. The said show cause notice proposes for demand of Rs.2,86,679/- with interest and penalty for violation of legal provisions under Finance Act, 1994 and Rules made there under. Vide impugned order, the adjudicating authority has confirmed the demand with interest and imposed penalty under Section 77(2) and 78(1) of Finance Act.

3. Being aggrieved, the appellant has filed by the instant appeals on the grounds that:

- the department was required to show that the freight shown in the books of accounts was paid towards transportation of goods on goods carriage and by using a motor vehicle; that the invoices clearly shows that the payment of freight made on a periodical basis, hence the amount of freight would be large even if the freight has been paid in smaller amounts to the person carrying material in hand carts and bullock carts; that many times the sand, bricks and kapchi comes in small hand carts or bullock carts which are not mechanically propelled and do not fall within the definition of motor vehicle.
- The appellant were never issued consignment notes and the adjudicating authority has wrongly concluded that since the invoices contained all the details required to be produced in consignment note, the same will be considered as consignment note; that they have paid freight not on consignment to consignment basis, but accounts with seller/vendor are settled on periodical basis. Thus, since the transportation of goods has not been done by goods transportation agency and individuals transporting the goods have not issued consignment note, service tax is not leviable on the cartage expenses for carting of sand, bricks and kapchi.
- No suppression of facts, mis statement or fraud involved in the matter as they have filed their ST-3 return regularly. Hence, extended period is not invocable.
- They relied on various case laws in their favour.

4. A personal hearing in the matter was held on 06.10.2017. Shri Bhavesh Patel, Chartered Accountant appeared on behalf of the appellant and explained the grounds of appeal and submitted additional submissions which shows bills and certificate issued in this matter.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal as well as at the time of personal hearing. The limited issue to be decided in the matter is relating to leviable of service tax on services of "Goods Transport Agency" under reverse charge mechanism incurred by the



appellant towards transportation expenses for receipt of goods and material for the period from 2010-11 to 2013-14.

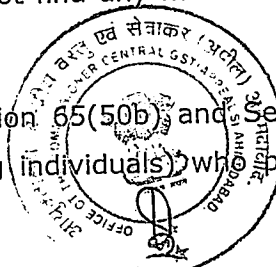
6. The main contention of the appellant is that they availed service of individual truck owners and no consignment notes were issued for transporting of goods as required under statutory provisions. They also contended that the definition of 'person' given in Section 65 B(37) of the FA can be referred with regard to GTA only if the person is GTA and issues the consignment note; that many times the sand, bricks and kapchi comes in small hand carts or bullock carts which are not mechanically propelled and do not fall within the definition of motor vehicle. They relied on Hon'ble High Court of Karnataka's decision in case of M/s Laxminarayana Mining Co- and other decisions of Hon'ble Tribunal, service tax is not leviable in case individual truck owners as they have not considered as "commercial concern" under 65(50b) of FA and also not liable for service tax as they have not issued consignment note as required under Rul4 4B of STR.

7. The adjudicating authority has contended that as per provisions of Section 65 (50b) [prior to 01.07.2012] and Section 65 B (26) [after 01.07.2012] of FA, 1994, the appellant is liable to pay service tax on the services of "Goods Transport Agency" as person includes an individual; that non issuance of consignment notes is a false declaration to evade the service tax liability; that the invoices shows every details of transporter's name, description of goods, amount of freight, bill number and date etc. He relied on decision of Hon'ble High Court of Madras in case of M/s K.M.Granites Pvt Ltd that even when no consignment notes are issued and where services of individual truck owners are availed, service tax is payable.

8. I observe that the impugned order discussed and analyzed the facts submitted by the appellant at the time of adjudication. The definition of "Goods Transport Agency" defines (prior to introduction of negative list and also after w.e.f 01.07.2012) that "any person who provides service in relation to transport of goods by road and issue consignment note, by whatever name called". As per Section 65(26) of the FA stipulates that "person" includes-an individual, a Hindu undivided family....., not falling within any of the proceeding sub-clauses. Further, transportation expenses incurred by the appellant for receipt of goods and material is taxable under reverse mechanism under Section 65(105)(zzp) of the FA read with notification No.36/2004-ST dated 31.12.2004 (prior to 01.07.2012) and notification No.30/2012-ST dated 20.06.2012.

9. In the instant case, I observe that the appellant has not discharged the tax liability on the services of Goods Transport Agency as a recipient of service on the grounds mentioned at para 6 above. I do not find any merit in the arguments of the appellant.

10. From the legal definitions under Section 65(50b) and Section 65(105)(zzp) *supra*, it is clear that any person (including individuals) who provides service in



relation to transport of goods by road is liable to Service Tax. There is no exclusion of individual truck owners from the purview of Service Tax levy under the said legal definition. It is a well settled position in law as clarified by the Hon'ble Apex Court in *Doypack Systems (Pvt.) Ltd.* [1988 (36) E.L.T 201 (S.C.)] and *J.K. Spinning and Weaving Mills Ltd.* [1987 (32) E.L.T. 234 (S.C.)] that when the words of the statute are plain and unambiguous, there is no need to place reliance on external aids such as parliamentary proceedings.

11. As regards service rendered by the individual truck owners and non-issuance of consignment notes, I observe that the appellant has argued on the basis of various Hon'ble Tribunal's decision in favour of their argument. I observe that the decisions are distinguished by other Bench of Hon'ble Tribunal and Hon'ble High Courts. I rely on following decisions.

12. The Hon'ble CESTAT, Hyderabad incase of M/s S V R Electrical Pvt Ltd [2016 (43)STR 574] has held that:

**3.** *The main plea raised in the written submission is that the trucks were driven by drivers of the appellant. That being private trucks they do not fall within the definition of "Goods Transport Agency". The appellant has relied on the judgment of CESTAT in Lakshminarayana Mining Co. v. CST, Bangalore - 2009 (16) S.T.R. 691 (Tri.). It is also submitted that the show cause notice is time-barred. That there was no suppression of facts on the part of the appellant. The freight charges were shown in the invoices and these invoices were signed by the jurisdictional Officer and the same was also declared in the I.T. Returns. That therefore, the demand is time-barred.*

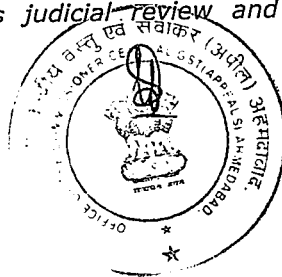
**4.** *Against this, the learned DR Shri M.S. Naskar contended that the decision in Lakshminarayana Mining Company case (Supra) is no longer good law. That the Hon'ble High Court of Madras in CCE, Salem v. Suibramia Siva Co-operative Sugar Mills Ltd. - 2014 (35) S.T.R. 500 (Mad.) has held that the use of the word "any person" in the definition of "Goods Transport Agency includes individual truck owners also. Similar view was taken in the case of Sree Balaji Transport v. CCE & ST, Tirupathi - 2015 (38) S.T.R. 651 (Tri.-Bang.). In the case of Sree Balaji Transport, the Tribunal examined the issue whether transportation undertaken by individuals owning and operating lorry and truck is subject to service tax. The Tribunal observed that under Section 60(506), Goods Transport Agency means "any person who prides service in relation to transport of goods by road and issues consignment note, by whatever name called". The language of the section is unambiguous and that "any person (including individuals) who provides service in relation to transport by road is liable to service tax".*

**5.** *In the light of the above judgments, I am of the view that the appellant does not succeed on merits."*

In the case of CCE Bilaspur V/s South Eastern Coalfields Ltd [2016 (41) STR 608], the Hon'ble High Court of Chhattisgarh has held that:

**7.** *The Tribunal, without any discussion of these findings arrived at by the Commissioner, by a cryptic conclusion has held that in absence of any consignment note actually having been issued, no liability of service tax arises. The question in the facts of the case is that once liability has been admitted by the Respondent, can technicalities justify non-compliance with the law when there is no substantive defence.*

**8.** *Suffice it to observe that any appellate order amenable to judicial review by a superior Court is required to be reasoned and considered, disclosing application of mind to the issues decided by the original authority, the grounds of appeal, the grounds taken in opposition to the appeal followed by a reasoning to arrive at its own independent conclusions especially when the order of the original authority is being set aside. Reasons have time and again been held to be the heart and soul of an order facilitating appreciation of the appellate order in judicial review. The order of the Tribunal in its present form affectively hinders judicial review and is also not sustainable for that reason.*





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payment of tax. In view thereof, I do not find any infirmity in the impugned order with regard to imposition of penalty also.

*U. Shankar*

(उमा शंकर)

आयुक्त (अपील्स )

Date: 27/10/2017.

Attested

*Mohanan V.V.*

(Mohanan V.V)  
Superintendent (Appeal)

By RPAD

To

M/s Harikrishna Infrastructure,  
14, Harshad Colopny, Part-1, Thakkar Bappanagar,  
B/h India Colony, Thakkar Bappanagar, Ahmedabad

Copy to:-

1. The Chief Commissioner, CGST Zone, Ahmedabad.
2. The Commissioner, CGST, South *12/10/17*
3. The Addl./Joint Commissioner, (Systems), CGST, South
4. The Dy. / Asstt. Commissioner, CGST, Division VI/VII South
5. Guard file.
6. P.A

