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- टेलेफैक्स07926305136

स्पीड पोस्ट

क फाइल संख्या : File No : V2(ST)50/Ahd-South/2018-19/15112 TO 15116

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-028-2020-21
दिनाँक Date : 29-06-2020 जारी करने की तारीख Date of Issue 2/07/2020

आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals

ग Arising out of Order-in-Original No. STC-70/ADC/09 दिनाँक: 29.01.2010 issued by Addl. Commissioner, Service Tax, Ahmedabad

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Shree bajrang Transport

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 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 मामलें 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 डयूटी केडिट 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 दिनाँक 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 Chailan 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 रूपये या उससे कम हो तो रूपये 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) उपरालिखित 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. Registar 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 ओदश 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 हैं।

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 not withstanding 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 अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर 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 अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

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

(6) वीगा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो के मामले में [illegible] 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 'संशोधित 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.

इसइस 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

This order arises out of remand proceedings in pursuance of Order dated 22.11.2011 of the Hon'ble CESTAT, Ahmedabad in appeal preferred by M/s Shree Bajrang Transport, 8, Shivam Shopping Centre, Chitrakut Dham, Uttamnagar, Maninagar, Ahmedabad (in short '*appellant*') against Order-In-Original No. STC-70/ADC/09 dated 29.01.2010 (in short '*impugned order*') passed by the then Additional Commissioner, erstwhile Service Tax Commissionerate, Ahmedabad (in short '*the adjudicating authority*') .

2. The facts of the case, in brief, are that the appellant was engaged in supplying their vehicle on rent to M/s Torrent Power Limited, Ahmedabad during the year 2007-08 and had received an amount of Rs.1,73,89,652/- on account of such supply of vehicle on rent. As it appeared to the department that the said amount received by the appellant was taxable under the service category of "Rent-a Cab Service", as per provisions of erstwhile Section 65(91) of the Finance Act, 1994 (in short '*the Act*'), a Show Cause Notice dated 30.03.2009 was issued to them for recovery of Service Tax amounting to Rs.8,59,744/- along with interest and imposition of penalty under Section 76, 77 and 78 of the said Act. The adjudicating authority vide the impugned order had confirmed the demand along with interest and also imposed penalties as proposed in the Show Cause Notice.

2.1 Aggrieved with the above order, the appellant preferred an appeal before the Commissioner (Appeals), Ahmedabad, mainly on the following grounds:

i) The important word in the definition of rent-a-cab operator scheme is the word renting which distinguished it from giving a taxi on hire. Under the tax hiring scheme, the taxi cab is under the control and custody of the taxi operator or his agent, as driver of the taxi and taxi cab is not under the control and custody of the person hiring the taxi. In the present case, the appellant had given their vehicle on hire to AEC and the charges for the same were on kilometer basis and the appellants were not giving their vehicle to their clients on rent and hence their activities are not covered the rent-a-cab operator service and they were not liable for service tax. They relied upon the case laws of R.S. Travels Vs. CCE, Meerut [2008 (12) STR 27 (Tri.-Del.)] and Noida Taxi Service Vs. CCE, Noida [2010 (17) STR 396 (Tri.-Del.)];

ii) They were eligible for value based exemption as small service provider as well as benefit of cum-duty on gross value;

iii) The payments received by the appellants were shown in the books of accounts and also in the balance sheet which is a public document. As per decisions of Tribunal in the cases of Hindalco Industries [2003 (161) ELT 346] and Hariss Laboratories Ltd. [2005 (185) ELT 421], the balance sheet being public

document, any demand raised on the basis of information appearing in the balance sheet after invoking extended period of limitation was illegal;

iv) The contention that the appellant has suppressed the material facts of realization of value of services and discharging the service tax liability are untenable. The Supreme Court in the case of Pushpam Pharmaceutical Company Vs. Collector of Central Excise, Bombay [1995 Supp (3) SCC 462] has held that mere failure to declare does not amount to willful suppression; there must be some positive act from the side of the assessee to find willful suppression; and

v) There was no deliberate defiance on their part and hence a lenient view be taken on penalty aspect. They relied upon various decisions of Tribunal and Supreme Court for the submission that penalty may not be imposed in all cases only because lawful to do so. The lapse, if any, may please be condoned and they be given benefit of Section 80 of the Act.

2.2 The Commissioner (Appeals), Ahmedabad vide Order-in-Appeal No.352/2010(STC) /KCG/Commr(A)/Ahd dated 30.09.2010 has dismissed the appeal filed by the appellant for non-compliance of stay order as well as on merits. The appellant carried the matter further by filing an appeal against the said OIA before the Hon'ble CESTAT, Ahmedabad, who vide their Order No.A/2093/WZB/AHD/2011 & S/1527/WZB/AHD/2011 dated 22.11.2011 set aside the Order-in Appeal and remanded the matter back to the first appellate authority to reconsider the issue, without insisting on any pre-deposit from the appellant and pass an order on merits.

3. After granting Personal Hearing in the appeal on 14.02.2012, the subject appeal was kept pending as the department had filed an appeal before the Hon'ble High Court of Gujarat, in an identical matter in the case of M/s Vijay Travels, Ahmedabad. The Hon'ble Court has decided matter vide their order dated 10.05.2013 against the assessee on merit, however, allowed the issue relating to the limitation of demand in favour of assessee. The appeal filed by the department before Hon'ble Supreme Court against the said order dated 10.05.2013 was finally withdrawn, as per Supreme Court Order dated 09.12.2019. Accordingly, the present appeal is taken up for decision.

4. Personal Hearing in the matter was held on 22.06.2020. Shri Vipul Khandhar, Chartered Accountant, appeared on behalf of the appellant. He re-iterated the submissions made in the Appeal Memorandum. He also submitted a written submission during the hearing and requested for its consideration.

5. I have carefully gone through the facts of the case and submissions made in the Appeal Memorandum and the oral submissions made at the time of Personal Hearing. I find that the issue to be decided in the matter is as to whether the supply of vehicle on rent by the respondent to M/s Torrent Power Limited, Ahmedabad is falling under the

service category of 'Rent-a-Cab' or otherwise, during the relevant period and the demand confirmed in this regard is sustainable or not.

6. I find that the issue is no longer res-integra and in similar sets of facts the Hon'ble High Court of Gujarat, in their order dated 10.05.2013 in case of Commissioner of Service Tax V/s M/s Vijay Travels [2014 (36) STR 513 (Guj.)], has held that the services provided by M/s Vijay Travels would get covered under rent-a-cab service and thereby, the respondent is to be held liable for service tax thereon. However, the Hon'ble High Court has upheld the decision of CESTAT with regard to limitation of demand. It was held that as there was no deliberate act of suppression or *mala fide* intention as the impugned service had been brought under the tax net recently and was prevailing ambiguity in respect thereof, the extended period of limitation was not invocable. The department has filed an appeal before the Hon'ble Supreme Court, vide SLP No.2461 of 2014, against the order of Gujarat High Court in respect of order relating to limitation of demand. The said appeal was withdrawn by the department, as per Hon'ble Supreme Court order dated 09.12.2019.

6.1 In view of above, the order of Hon'ble High Court of Gujarat supra is binding on the present issue.

7. I find that in M/s. Vijay Travels case, the Hon'ble High Court has observed that the said assessee is engaged in supply of vehicle with Gujarat Secondary Education, as per contract, for the purpose of transportation of papers/answer sheets, examiners, staff, etc; that the service provider also used its own cars and had taken vehicles on rent from other persons as well. After analyzing on the meaning of the words 'rent', 'hire', 'cab' and 'motor cab', the Hon'ble High Court has concluded that any person natural or juristic, when carries on continuous activity of renting of a cab, i.e. letting for the use in case of maxi cab or motor vehicle, such renting out of a vehicle would invite taxable service. The Hon'ble Court has further held that it can be said that the petitioner cannot escape tax liability on the ground that the hiring is different from renting as the intention of the Government is to tax service provider of a service which involves both hiring and renting of a cab for a longer duration and distinction as sought to be carved out by the petitioner is not finding favour with this Court. In the said decision, the Hon'ble High Court has answered the following questions of law:

Sr.No.	Questions of Law considered	Answer
1	Whether the Hon'ble CESTAT is correct in holding that Rent-a-cab scheme operator does not cover all manner of transport when the vehicles rented by M/s. Vijay Travels, squarely falls within the	Answered in favour of the revenue. It is concluded that the service tax which was introduced for levying the tax on certain taxable services as such services contributed substantially to Gross

	definition of 'Cab' as per Section 65(20) of the Finance Act, 1994?	Domestic Product (GDP) and rent-a-cab service is specifically covered under the tax net. The question needs to be answered this wise that the services provided by M/s Vijay Travels herein would get covered under rent-a-cab service and thereby, held liable for the service tax thereon.
2	Whether the Hon'ble CESTAT is correct in holding that there was no renting out of cabs as the vehicles continued to be with the operator and was paid per trip/kms and vehicles were given on 'hire' basis, when 3the "Rent-a-cab scheme operator services" under the Finance Act, 1944 does not require ownership of vehicle or provides payment of service tax only if the vehicles are given on 'rent'?	As mentioned at (1) above.
3	Whether the Hon'ble CESTAT, WZB, Ahmedabad is right in not following the judicial discipline by issuing orders which are against the law which remains settled by the Hon'ble Supreme Court of India and various other Tribunals?	Do not require any separate answers being the extension of the arguments of Question Nos. I and II.
4	Whether the Hon'ble CESTAT violates its jurisdiction and issue orders contrary to the statute?	Do not require any separate answers being the extension of the arguments of Question Nos. I and II.
5	Whether the Tribunal committed error in interpreting proviso to Section 73(l) of the Finance Act and erred in holding that the show cause notice issued to the assessee was barred by limitation though assessee failed in filing any return or providing information constraining department to issue summons for the information from the assessee by willingly suppressing information from the department?	Answered in negation and therefore, in favour of the assessee. Considering a serious legal debate as to who can be said to be renting of a cab, petitioner if has not paid service tax on such services, the Tribunal correctly appreciated that such, by no stretch of imagination, be held as mis-statement or deliberate act of suppression or *mala fide* intent
6	Whether the Tribunal committed error in interpreting Sections 76, 77 and 78 of Finance Act by deleting the penalty imposed on the assessee?"	As per 5 above.

8. In the instant case, from the records, it is observed that the appellant, a 'cab operator' was supplying vehicles on rent to M/s Torrent Power Ltd and received Rs.1,73,89,652/- for the period from 01.04.2007 t0 31.03.2008. The Government vide Notification No.09/2004-ST dated 09.07.2004 and Notification No.01/2006-ST dated 01.03.2006 as amended had allowed an abatement of 60% of the gross amount charged from any person by rent-a-cab operator for computation of service tax. In other words, the service tax would be liable in the case on 40% of the gross amount charged by the cab operator for providing this taxable service. Accordingly, the service tax liability of the appellant in the case has been worked out at Rs.8,59,744/- during the above referred period.

8.1 As per provision of erstwhile Section 65(91) of the Finance Act, 1994, the term "rent-a-cab scheme operator" means any person engaged in the business of renting of cabs; erstwhile Section 65(20) of the Finance Act, 1994 defines 'cab' as 'motor cab or maxi cab'. The terms 'maxi cab' and 'motor cab' are further defined under erstwhile Section 65(70) and 65(71) of the Finance Act, 1994. As per Section ibid "maxicab" has the meaning assigned to it in clause (22) of section 2 of the Motor Vehicles Act, 1988 and "motorcab" has the meaning assigned to it in clause (25) of section 2 of the Motor Vehicles Act, 1988. As per Section 2(22) of the Motor Vehicle Act, 1988, the terms 'maxi cab' means any motor vehicle constructed or adapted to carry more than six passengers, but not more than twelve passengers excluding the driver, for hire or reward. Section 2(25) of the said Act defines the term 'motor cab' as any motor vehicle constructed or adapted to carry out not more than six passengers excluding driver for hire or reward. As per the provisions of sub-clause (o) of Section 65(105) of the Act, the taxable service in this case has been defined as '*any service provided to any person, by a rent-a-cab scheme operator in relation to the renting of a cab.*'

9. The adjudicating authority has confirmed the demand of Service Tax along with interest in view of the above legal provisions. The issues involved in the instant appeal is no more res integra, in view of the decision of the Hon'ble High Court of Gujarat in the case of M/s. Vijay Travels (supra) wherein the Hon'ble High Court has held the service as taxable service falling under the service category of 'rent-a-cab scheme operator service', as discussed at para 7 above. Therefore, looking into the facts of the case, definition of 'rent-a-cab-scheme operator service' and the decision of the Hon'ble Gujarat High Court's order supra, the service provided by the appellant fall under the service category of 'rent-a-cab' service and Service Tax is leviable on consideration received against such services provided. Accordingly, the demand confirmed in the impugned order is liable to be upheld along with interest.

10. However, I find that the Hon'ble High Court of Gujarat, in its order supra, has held that "considering a serious legal debate as to who can be said to be renting of a cab,

petitioner if has not paid service tax on such services, the Tribunal correctly appreciated that such, by no stretch of imagination, be held as mis-statement or deliberate act of suppression or *mala fide* intent". In the instant case, the period under dispute is from 01.04.2007 to 31.03.2008 and the Show Cause Notice was issued for the disputed period on 31.03.2009, by invoking larger period of limitation. By applying the ratio of the above cited decision of the Hon'ble High Court of Gujarat, the demand confirmed beyond the normal period of limitation by invoking larger period is not sustainable and the same is, therefore, liable to be set aside. As per Section 73 of the Act, during the relevant period, demand notice under normal period is required to be issued within one year from the relevant dates, as prescribed under sub section (6) of Section which reads as under :

> (i) *in the case of taxable service in respect of which service tax has not been levied or paid or has been short-levied or short-paid —*
>
> *(a) where under the rules made under this Chapter, a periodical return,showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed;*
>
> *(b) where no periodical return as aforesaid is filed, the last date on which such*
>
> *return is to be filed under the said rules;*
>
> *(c) in any other case, the date on which the service tax is to be paid under this Chapter or the rules made there under.*

In the instant case, clause (i) (b) above is applicable as the appellant had not filed any Service Tax Return in respect of disputed period. For the said period, the appellants were required to file two half yearly returns for the period from April 2007 to September 2007 for which the due date of filing of return was 25.10.2007 and for the period from October 2007 to March 2008 for which the due date of filing was 25.04.2008. Since the Show Cause Notice in the case was issued on 30.03.2009, part of demand pertaining to the half year period from April 2007 to September 2007 would be hit by limitation for being beyond the normal period of limitation as discussed above. The demand for the half year period from October 2007 to March 2008 would be sustainable being within the normal period of limitation of one year from the relevant date. Accordingly, in view of the Hon'ble High Court's order in the case of M/s Vijay Travels (supra), I find that part of demand in the present case pertaining to the period from April 2007 to September 2007 is required to be set aside and the demand pertaining to the period from October 2007 to March 2008 is to be held as sustainable. Accordingly, I confirm the demand for the period from October, 2007 to March, 2008 which is within the normal period of limitation provided under Section 73 of the Act. For the demand upheld, demand of interest under Section 75 of the Act is natural corollary and hence interest would be

chargeable on the part of demand upheld. I also find that imposition of penalty under 76 of the Finance Act, 1994 in case of non-payment of tax is automatic and since part of demand is set aside, penalty under Section 76 of the Act have to be modified accordingly considering the same. Besides that the appellant had not filed any returns and also did not follow the procedures prescribed under the Finance Act, 1994 and hence penalty confirmed under Section 77 is upheld. Since no malafide intention is attributable in the case as per judgment of Hon'ble High Court of Gujarat as discussed above, the imposition of penalty under Section 78 is not sustainable and accordingly, the same is set aside.

11. In view of above discussions, the appeal of the appellant is partly allowed to the extent of the demand set aside for the for the period from April 2007 to September 2007 and partly rejected to the extent of demand upheld for the period from October 2007 to March 2008.

12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed off in above terms.

(Akhilesh Kumar)
Commissioner (Appeals)

Date: 29.06.2020.

Attested:

(Anilkumar P.)
Superintendent(Appeals),
CGST, Ahmedabad.

BY SPEED POST

To

M/s Shree Bajrang Transport,
8, Shivam Shopping Centre,
Chitrakut Dham, Uttamnagar,
Maninagar, Ahmedabad

Copy to:-

1. The Principal Chief Commissioner, CGST, Ahmedabad Zone .
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Additional Commissioner, CGST, Ahmedabad South.
4. The Assistant Commissioner (System), CGST, Ahmedabad South.
5. Guard File.
6. P.A.