



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeals Ahmedabad Commissionerate  
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आज़ादी का  
अमृत महोत्सव

**By Regd. Post**

DIN No.: 20230264SW00000530C7

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/2688/2022-APPEAL / 8068-72
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-001-APP-148/2022-23 and 27.01.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	03.02.2023
(ङ)	Arising out of Order-In-Original No. MP/10/AC/Div-IV/22-23 dated 04.05.2022 passed by the Assistant Commissioner, CGST, Division-IV, Ahmedabad South Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Bharatiya Roadways, A-75, Pushpraj Complex, Jasoda Chokdi, Vatva, GIDC Road, Ahmedabad- 382445

कोई व्यक्ति इस अपील-आदेश से असंतोश अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो सकता है।

Any person aggrieved by this Order-in-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way.

भारत सरकार का पुनरीक्षण आवेदन:-

**Revision application to Government of India:**

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं 2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

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

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

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

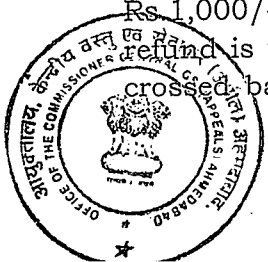
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-  
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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

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

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



sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति 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 Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

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

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

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर 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.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपीलो के मामले में कर्तव्यमांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में 'अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994).

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

The present appeal has been filed by M/s. Bharatiya Roadways, A-75, Pushpraj Complex, Jasoda Chokdi, Vatva GIDC Road, Ahmedabad – 382 445 (previously at : 78, Shiv Shakti Estate, Evergreen Narol, Narol Char Rasta, Narol, Ahmedabad – 382 405) (hereinafter referred to as the “appellant”) against Order in Original No. MP/10/AC/Div-IV/22-2 dated 04.05.2022 [hereinafter referred to as “*impugned order*”] passed by the Assistant Commissioner, Division – IV, CGST, Commissionerate : Ahmedabad South [hereinafter referred to as “*adjudicating authority*”].

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. ACQPC3957QST001. As per the information received from the Income Tax Department, the appellant had earned substantial income from Transporter services amounting to Rs.44,10,999/- during F.Y. 2015-16 in respect of which service tax was not paid on the whole income received from services. The appellant was called upon vide letters of different dates as well as under Summons dated 20.11.2020 to submit the documents mentioned therein. However, the appellant did not respond to the letters or the summons. Therefore, the appellant was issued Show Cause Notice wherein it was proposed to :

A. Demand and recover the service tax amounting to Rs.1,91,839/- under the proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994.

B. Impose penalty under Sections 77(1), 77(2) and 78 of the Finance Act, 1994.

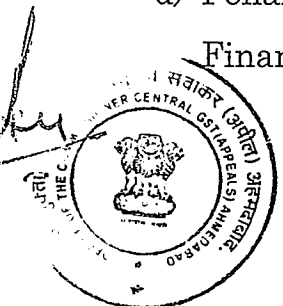
3. The SCN was adjudicated vide the impugned order wherein :

a) The demand of service tax amounting to Rs.1,91,839/- was confirmed.

b) Interest was ordered to be recovered under Section 75 of the Finance Act, 1994.

c) Penalty amounting to Rs.1,91,839/- was imposed under Section 78 of the Finance Act, 1994.

d) Penalty amounting to Rs.20,000/- was imposed under Section 77 of the Finance Act, 1994.



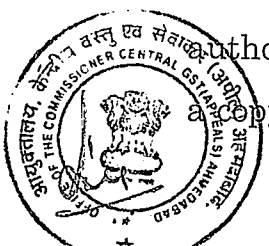
4. Being aggrieved with the impugned order, the appellant have filed the present appeal on the following grounds :

- i. As per Section 68 (2) of the Finance Act, 1994, they are not liable o pay service tax. Notification No. 30/2012-ST dated 20.06.2012 covers GTA service and shifts the full responsibility of service tax on the service received.
- ii. As per Entry No. A(ii) of the said Notification, an individual/Proprietorship firm is not covered in the specified category. This means that if the freight is paid by an individual/Proprietorship firm or HUF, then the service tax thereon shall be paid by the GTA itself.
- iii. In their case, they provide service to Private Limited Companies and Partnership Firms only and, therefore, they are not liable to pay service tax. They rely upon the judgment in the case of Essar Logistics Ld. Vs. CCE, Surat – 2014 (33) STR 588 (Tri.-Ahmd.).
- iv. They submit copies of some party ledgers which are of Private Limited Companies and Partnership Firms as well as ledgers of such parties from whom they collected and deposited service tax. They also submit copy of the P&L Account for the period under dispute.

5. Personal Hearing in the case was held on 05.01.2023. Shri Ronak Prajapati and Shri Ravikumar Rana, Chartered Accountants, appeared on behalf of appellant for the hearing. They reiterated the submissions made in the appeal memorandum.

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the submissions made at the time of personal hearing and the materials available on records. The issue before me for decision is as whether the impugned order passed by the adjudicating authority confirming demand of service tax amounting to Rs.1,91,839/-, in the facts and circumstances of the case, is legal and proper or otherwise. The dispute pertains to the period F.Y. 2015-16.

7. It is observed that the appellant had submitted before the adjudicating authority copies of their Balance Sheet, P&L Account, Income Tax Return and Copy of Service Tax Audit order. Further, the appellant had submitted copy



of their Sales Register for the disputed period before the adjudicating authority and contended that they are providing service to Private Limited Companies and Partnership Firms, which are covered by reverse charge in terms of Notification No.30/2012-ST dated 20.06.2012. The adjudicating authority has, however, rejected the contentions of the appellant on the ground that they have not put forth anything to justify their claim and that they had not submitted any document as to whether their customers are falling under any of the categories specified in the said Notification.

7.1 It is observed that the adjudicating authority has without considering the documents submitted by the appellant, mechanically rejected their claim that the services provided by them are covered under reverse charge in terms of the said Notification. The names of some of the firms to whom the appellant had provided GTA service are recorded in Para 18.4 of the impugned order and many of these firms, by their very names, are clearly found to be Private Limited or Limited Companies and therefore, liable to pay service tax under reverse charge in terms of the said Notification. In any event, since the demand has been raised by the department, the onus is on the department to place on record evidences that the service recipients to whom the appellant are providing GTA service are entities who are excluded from the ambit of reverse charge mechanism. However, no evidence has been brought on record in the SCN to establish that reverse charge is not applicable in respect of the GTA services provided by the appellant. Considering these facts, I am of the considered view that the appellant are not liable to pay service tax in respect of the GTA service provided by them to their customers.

8. It is observed that the appellant were issued SCN on the basis of the data received from the Income Tax Department and the appellant were called upon to submit documents/details in respect of the service income earned by them. However, the appellant failed to submit the same. Thereafter, the appellant was issued SCN demanding service tax by considering the income earned by them as income earned from providing taxable services. However, no cogent reason or justification is forthcoming for raising the demand against the appellant. The demand of service tax has been raised merely on the basis of the data received from the Income Tax, which indicated that the appellant had reported income from sale of Transporter services in their ITR. However,



the data received from the Income Tax department cannot form the sole ground for raising of demand of service tax.

8.1. I find it pertinent to refer to Instruction dated 26.10.2021 issued by the CBIC, wherein it was 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.”

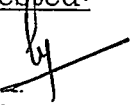
8.2 However, in the instant case, I find that no such exercise, as instructed by the Board, has been undertaken, and the SCN has been issued only on the basis of the data received from the Income Tax department. Therefore, on this very ground the demand raised vide the impugned SCN is liable to be dropped.

9. In view of the above, I set aside the impugned order and allow the appeal filed by the appellant.

10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

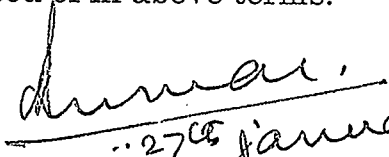
Attested:

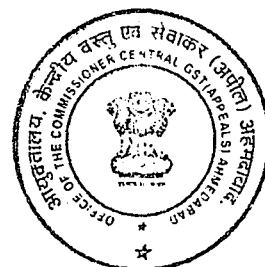
  
(N.Suryanarayanan. Iyer)  
Assistant Commissioner (In situ) (Appeals),  
CGST, Ahmedabad.

BY RPAD / SPEED POST

To

M/s. Bharatiya Roadways,  
A-75, Pushpraj Complex,  
Jasoda Chokdi,

  
..27<sup>th</sup> January, 2023  
( Akhilesh Kumar )  
Commissioner (Appeals)  
Date: .01.2023.



Appellant

Vatva GIDC Road,  
Ahmedabad – 382 445

The Assistant Commissioner,  
CGST, Division- IV,  
Commissionerate : Ahmedabad South.

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (HQ System), CGST, Ahmedabad South.  
(for uploading the OIA)
- ✓ 4. Guard File.
5. P.A. File.

