आयुक्त(अपील)का कार्यालय,

Office of the Commissioner (Appeal)

केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ीअहमदाबाद३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN : 20220664SW00003883AE

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1641/2021 / 21370 21410

ख अपील आदेश संख्याOrder-In-Appeal Nos.**AHM-EXCUS-001-APP-030/2022-23**
दिनाँक Date : **23-06-2022** जारी करने की तारीख Date of Issue 28-06-2022

आयुक्त (अपील) द्वारापारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original Nos. **CGST/WS07/O&A/OIO No. 27/MK/DC/2020-21** दिनाँक: **31.03.2021** issued by Deputy Commissioner, Central GST, Division –VII, Ahmedabad-South

ध अपीलकर्ता का नाम एवं पता Name & Address of the **Appellant/ ~~Respondent~~**

M/s Prathna Infrastructure
37, Devpriya Bunglow Part -2,
Anandnagar Char Rasta, 100 Feet Road,
Ambawadi, Ahmedabad - 380015

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 पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीनसचिव, 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 मे चाहे वह किसी कारखानेमें 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.

अंतिमउत्पादनकीउत्पादन शुल्क के भुगतान के लिए जोडयूटीकेडिटमान्य की गईहैऔर ऐसेआदेशजोइस धारा एवंनियम के मुताबिकआयुक्त, अंपील के द्वारापारित वो समय पर या बादमेंवित्तअधिनियम (नं.2) 1998 धारा 109 द्वारानियुक्तकिए 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 अंतर्गतविनिर्दिष्टप्रपत्र संख्या इए–8 मेंदोप्रतियोंमें, प्रेषितआदेश के प्रतिआदेशप्रेषितदिनाँकसेतीनमास के भीतरमूल–आदेश एवंअपीलआदेश की दो–दोप्रतियों के साथउचितआवेदनकियाजानाचाहिए।उसकेसाथ खाता इ.कामुख्यशीर्ष के अंतर्गत धारा 35–इ मेंनिर्धारितफी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रतिभीहोनीचाहिए।

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) रिविजनआवेदन के साथजहाँ संलग्नरकम एक लाख रूपये या उससे कम होतो रूपये 200/–फीसभुगतान की जाए औरजहाँ संलग्नरकम एक लाख सेज्यादाहोतो 1000/– की फीसभुगतान 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 एवंसेवाकरअपीलीय न्यायाधिकरण के प्रतिअपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्कअधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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

(क) उक्तलिखितपरिच्छेद 2 (1) क मेंबताए अनुसार के अलावा की अपील, अपीलो के मामलेमेंसीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवंसेवाकरअपीलीय न्यायाधिकरण(सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबादमें2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद–380004

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

आयुक्त(अपील), केन्द्रीय वस्तु एवं सेवाकर (अपील) अहमदाबाद
OFFICE OF THE COMMISSIONER CENTRAL GST (APPEALS), AHMEDABAD

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) यदिइसआदेशमेंकईमूलआदेशोंकासमावेशहोताहैतोप्रत्येकमूलओदश के लिए फीसकाभुगतानउपर्युक्तढंग सेकियाजानाचाहिए इसतथ्य के होतेहुए भीकिलिखा पढी कार्यसेबचने के लिए यथास्थितिअपीलीय न्यायाधिकरणको एक अपील या केन्द्रीय सरकारको एक आवेदनकियाजाताहैं।

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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि–1 के अंतर्गतनिर्धारितकिए अनुसारउक्तआवेदन या मूलआदेश यथास्थितिनिर्णयनप्राधिकारी के आदेशमेंसेप्रत्येक की एक प्रतिपर रू.6.50 पैसेकान्यायालय शुल्कटिकटलगाहोनाचाहिए।

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) इनओरसंबंधितमामलोंकोनियंत्रण करनेवालेनियमों की ओरभी ध्यानआकर्षितकियाजाताहैजोसीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवंसेवाकरअपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 मेंनिहितहै।

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

(16) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवंसेवाकरअपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामलेमेंकर्तव्यमांग(Demand) एवंदंड(Penalty) का10%पूर्वजमाकरनाअनिवार्यहै। हालांकि, अधिकतमपूर्वजमा10 करोड़रुपएहै।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीयउत्पादशुल्कऔरसेवाकरकेअंतर्गत, शामिलहोगा "कर्तव्यकीमांग"(Duty Demanded)-

(i) *(Section)* खंड 11D केतहतनिर्धारितराशि;
(ii) लियागलतसेनवैटक्रेडिटकीराशि;
(iii) सेनवैटक्रेडिटनियमोंकेनियम 6 केतहतदेयराशि.

⇨ यहपूर्वजमा 'लंबितअपील' मेंपहलेपूर्वजमाकीतुलनामें, अपील' दाखिलकरनेकेलिएपूर्वशर्तबनादियागयाहै.

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:
(xxxi) amount determined under Section 11 D;
(xxxii) amount of erroneous Cenvat Credit taken;
(xxxiii) 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

The present appeal has been filed by M/s. Prathna Infrastructure, 37, Devpriya Bunglow Part-2, Anandnagar Char Rasta, 100 Feet Road, Ambawadi, Ahmedabad – 380 015 (hereinafter referred to as the appellant) against Order in Original No. CGST/WS07/O&A/OIO No.27/MK/DC/2020-21 dated 31.03.2021 [hereinafter referred to as "*impugned order*"] passed by the Deputy Commissioner, Division – VII, CGST, Commissionerate : Ahmedabad South [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant were holding Service Tax Registration No. AAQFP2295JSD001 under the category of Construction Services other than Residential Complex, including Commercial/Industrial Building or Civil Structures, Construction of Residential Complex Service, Transport of Goods by Road/Goods Transport Agency service and Works Contract Service. During the course of audit of the financial records of the appellant for the period August, 2014 to June, 2017 by the officers of CGST Audit Commissionerate, Ahmedabad, it was observed that the appellant had during F.Y. 2016-17 short paid/not-paid service tax amounting to Rs.1,32,097/- under the category of Transportation of Goods by road under reverse charge. On being pointed out vide letter dated 18.10.2018 by the Audit Officer, the appellant vide their letter dated 25.10.2018 informed that they were not in agreement with the Audit as they were eligible for deduction of individual transport service which was exempted. The contention of the appellant was not accepted by the Audit Officers as the appellant had in F.Y. 2015-16 and F.Y. 2017-18 paid service tax on the entire amount incurred on freight expenses for the same transporter or in similar cases as seen from their freight ledger.

2.2 The appellant was, therefore, issued a Show Cause Notice bearing No. 75/2018-19/CGST-AUDIT dated 28.03.2019 from F.No. VI/1(b)-120/C-IV/Audit/Abad/17-18 wherein it was proposed to :

a) Demand and recover service tax amounting to Rs.1,32,097/- under the proviso to Section 73 (1) of the Finance Act, 1994.

b) Recover Interest under Section 75 of the Finance Act, 1994.

c) Impose penalty under Section 78 of the Finance Act, 1994.

3. The SCN was adjudicated vide the impugned order wherein the demand for service tax was confirmed along with interest. Penalty equivalent to the service tax confirmed was imposed under Section 78 of the Finance Act, 1994.

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

i. They had purchased material from the supplier on FOR basis from time to time. While transporting the material, the supplier has been availing service of individual/owner tanker holder for transportation of goods. They refer to the Finance Minister's Speech wherein stated that there was no intention to levy service tax on truck owners or truck operators.

ii. If doubt arises in interpretation of a fiscal or taxing statute, speeches made in the Parliament are admissible as an aid to construe a statute. They rely upon the judgment of the Hon'ble Supreme Court in the case of K.P. Varghese Vs. ITO – 1981 (131) ITR 597 (SC).

iii. The service provider under Section 65(50b) of the Act is 'goods transport agency' and not 'goods transport operator/owner'. In other words the service must be rendered by a GTA (under a contract of agency) and if the truck is provided by a goods transport operator or owner himself, there would be no service tax. This is because what is taxed is the services rendered by a Goods Transport Agency in relation to transport of goods by road. The department has ignored this aspect of law which is of cardinal importance.

iv. The provisions of the taxing statute, especially the charging section, has to be interpreted strictly and there is no scope for any intendment. They rely upon the judgment of the Hon'ble Supreme Court in the case of Hemraj Gordhandas Vs. H.H. Dave – 1978 (2) ELT J350 (SC).

v. The word 'agency' in GTA should be construed as per the definition of agent given in Section 182 of the Indian Contract Act, 1872 as per which an agent is a person employed to do any act for another or to represent another in dealings with the third persons. The above aspect of agency being absent when a truck owner or operator gives a truck without an agent being go-between, there can be no tax.

vi. From the definition of GTA and also the clarification given by the Finance Minister in the Budget speech, they are of the view that they are not liable to pay service tax in respect of service availed from individual or truck owner.

vii. They submit the reconciliation of transportation expenses as per books and ST-3 returns from which it can be seen that they had made excess payment of Rs.26,709/-. While calculating service tax, the department has not taken in to consideration the transportation expenses incurred from individual transporters amounting to Rs.42,29,547/-.

viii. Even if they are liable to pay service tax, it is a revenue neutral situation as they would have been eligible for cenvat credit of such service against their output service tax liabilities.

ix. They rely upon the decision in the case of Popular Vehicles & Services Ltd. Vs. Commissioner of Central Excise, Kochi – 2010 (18) STR 493 (Tri.-Bang.); Dineshchandra R. Agarwal Infracon Pvt. Ltd. Vs. CCE, Ahmedabad – 2010 (18) STR 39 (Tri.-Ahmd.) and Sakthi Auto Components Ltd. Vs. Commissioner of Central Excise, Salem – 2009 (14) STR 694 (Tri.-Chennai).

x. The SCN covers the period from 01.04.2016 to 31.03.2017 and was issued on 28.03.2019 by invoking extended period of limitation. They are filing income tax returns and service tax returns regularly. Extended period cannot be invoked as there is no suppression, wilful mis-statement on their part.

xi. Penalty cannot be imposed on them under Section 78 of the Finance Act, 1994 as they had not suppressed any information from the department and there was no wilful mis-statement on their part.

xii. The SCN has not given any reason for imposing penalty under Section 78. The SCN merely alleges that there is suppression on their part but no evidence has been brought out which established that they had suppressed anything from the department. They rely upon the decision in the case of Steel Cast Ltd. – 2011 (21) STR 500 (Guj.).

xiii. No case has been made out by the department that the demand is on account of fraud, collusion and willful mis-statement, suppression of facts or contravention of any of the provisions of the Act or the rules with intention to evade payment of service tax. Hence, no interest or penalty can be imposed on this ground itself.

xiv. The issue involved is of interpretation of statutory provision and therefore, penalty cannot be imposed. They rely upon the decision in the case of :- Bharat Wagon & Engg. Co Ltd. Vs. Commissioner of C.Ex., Patna – (146) ELT 118 (Tri.-Kolkata); Goenka Woolen Mills Ltd Vs. Commissioner of C.Ex., Shillong – 2001 (135) ELT 873 (Tri.-Kolkata); Bhilwara Spinners Ltd Vs. Commissioner of C.Ex, Jaipur – 2001 (129) ELT 458 (Tri.-Del).

5. Personal Hearing in the case was held on 14.06.2022 through virtual mode. Shri Vipul Khandar, Chartered Accountant, appeared on behalf of appellant for the hearing. He reiterated the submissions made in appeal memorandum as well as in additional written submission. He relied upon the judgments submitted along with additional written submission.

6. The appellant in the additional written submission filed by them contended, inter-alia, that :

- The term 'person liable for paying service tax' is defined under Rule 2 (d) of the Service Tax Rules, 1994. In the present case, transporters transferring material to the construction site are not issuing any consignment note. Thus, mere transportation of goods in a motor vehicle is not the service provided by a GTA. A GTA in terms of the definition under Section 65(50b) provides service in relation to transportation of goods under a consignment note which should have particulars prescribed in the explanation to Rule 4B.
- In the present case, no consignment notes have been issued. The fortnightly bills cannot be treated as consignment notes, as a consignment note issued by a GTA represents its liability to transport the consignment to the destination and deliver the same to consignee. Merely a bill issued for transportation of goods cannot be treated as Consignment Note.
- They have not availed any service from GTA, so they are not liable to pay tax on such individual transport service availment.
- They rely upon the judgment in the case of Nandganj Sihori Sugar Co. Ltd. Vs, Commissioner of Central Excise, Lucknow – 2014 (34) STR 850 (Tri.-Del.); Mahanadi Coalfields Ltd. Vs. Commissioner of C.Ex. & S.T., BBSR-I – 2022 (57) GSTL 242 (Tri.- Kolkata); Commissioner of C.Ex.,

Lucknow Vs. Kisan Sahakari Chini Mills Ltd. – 2019 (29) GSTL 292 (All.)

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the submissions made at the time of personal hearing, the additional written submissions as well as the material available on records. I find that the issue to be decided in the case is whether the appellant is liable to pay the service tax, under reverse charge, in respect of the goods transport service availed by them. The demand pertains to the period F.Y.2016-17.

8. It is observed that the term 'Goods Transport Agency' has been defined under Section 65B (26) of the Finance Act, 1994, which is reproduced as below :

> " "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;"

Further, services provided by a Goods Transport Agency is charged to service tax under reverse charge in terms of Section 68 (2) of the Finance Act, 1994. Notification No. 30/2012-ST dated 20.06.2012 specifies the services in respect of which service tax is to be paid under reverse charge. It is pertinent to refer to the Serial Number I(A) (ii) said Notification, which is reproduced as below :

> "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,-."

8.1 I find that the demand for SCN has been primarily raised on the grounds that the appellant had, during F.Y. 2015-16 and F.Y.2017-18, paid service tax under reverse charge on the freight expenses incurred for the same transporter or in similar cases. It is not disputed by the appellant that in respect of transportation service provided by a GTA, the service recipient is liable to pay service tax under reverse charge in terms of Notification No.30/2012-ST dated 20.06.2012. The appellant have, however, contended that the goods transport service availed by them are exempted as the same was provided by individual transporters. They have in support of their contention relied upon a few judgments of the Hon'ble Tribunal and the Hon'ble High Court.

8.2 I find that the adjudicating authority has in the impugned order relied upon the judgment of the Hon 'ble High Court of Madras in the case of CCE,

Salem Vs. Suibramania Siva Co-Op. Sugar Mills Ltd. – 2014 (35) STR 500 (Mad.). The relevant part of the said judgment is reproduced as below :

> **"15.** A reading of the decision of the Bangalore Tribunal shows that in considering the applicability of the exemption Notification No. 34/2004-S.T., dated 3-12-2004, the Tribunal referred to the amendment to Section 65(50b) of the Finance Act on "Goods Transport Agency" and the clarification given by the Finance Minister in his Budget Speech and thus held that when the services were rendered by individual truck owner/operators, there was no liability to service tax. Thus the Tribunal viewed that when the tax was paid wrongly, the assessee was not liable to pay any service tax. In the circumstances, the Bangalore Tribunal allowed the appeal.
>
> **16.** As far as the reliance placed on the Finance Minister's Speech in the course of budget presentation is concerned, Courts have consistently held that budget speech would not be taken in aid for understanding the scope of the clear terms of the provisions in the taxation enactment vide the decision of the Apex Court reported in 1998 (9) SCC 630 = 1998 (99) E.L.T. 199 (S.C.) *[Union of India* v. *Ganesh Rice Mills and Another]*.
>
> **17.** Section 65(50b) of the Finance Act, 1994 defines the "Goods Transport Agency" as 'any person' who provides service in relation to transport of goods by the road and issuing consignment note, by whatever name called.
>
> **18.** The expression "any person" is not defined under the Act. Section 3(42) of the General Clauses Act defines "person", as including any company or association or body of individual whether incorporated or not. The thrust of the definition is that it includes every person engaged in an activity providing service of transport of goods by road. Thus, any commercial or a proprietary concern carrying on the business of Goods Transport would fall under the definition of "Goods Transport, Agency" in Section 65(50b) of the Finance Act. In the absence of any words of restriction, the definition 'any person' thus would have application to any concern providing the service."

8.3 The adjudicating authority has also relied upon the judgment of the Hon 'ble High Court of Madras in the case of Commissioner of Central Excise, Salem Vs. K.M.B. Granites Pvt. Ltd. – 2014 (35) STR 63 (Mad). I find that in the said case, it was contended before the Hon'ble High Court that *"in view of the amendment to Section 65(50b) of the Finance Act, 'Goods Transport Agency' means any commercial concern which provides service in relation to transport of goods by road and issues consignment note, by whatever name called. The assessee further contended that they had not engaged any GTA as defined in the Finance Act, 1994 and that they had engaged only individual operators and no consignment notes or invoices were raised by the transport operators; thus, the question of suffering Service Tax did not arise."* The Hon'ble High Court has, following their earlier judgment in the case of Suibramania Siva Co-Op. Sugar Mills Ltd. supra, held at Para 8 of their judgment that :

"**8.** In the light of the decisions thus given by us in CMA. No. 3079 & 3080 of 2011 (cited supra), we set aside the order of the Customs Excise and Service Tax Tribunal and **hold that the individual operator would also be covered within the meaning of expression 'commercial concern' as appeared under Section 65(50b) of Finance Act**. Consequently, the appeals in CMA No. 2567 of 2010 and CMA No. 2573 of 2010 are allowed and the order of the CESTAT is set aside. No Costs." [Emphasis supplied].

8.4 I find that the appellant have in their support relied upon the judgment of the Hon'ble High Court of Allahabad in the case of Commissioner of C.Ex., Lucknow Vs. Kisan Sahakari Chini Mills Ltd. – 2019 (29) GSTL 292 (All.). However, I find that the Hon'ble High Court had in the said case taken a view which is similar to that of the Hon'ble High Court of Madras. The Hon'ble Allahabad High Court had in their judgment held that :

"**12.** Therefore, a Goods Transport Agency, i.e., a person who provided service in relation to transport of goods by road and issues consignment note (by whatever name called) when render such service to any cooperative society established by or under any law; or company formed or registered under the Companies Act, 1956; or any body corporate established by or under any law; (or other category or persons detailed in clause (v) of Rule 2(d), which we do not find applicable in the case in hand), would be liable to pay service tax.

13. In the present case, transporters transferring sugarcane from Cane Collection Centers to sugar mills and presenting bills for such service, in our view, squarely satisfy the requirement of Rule 2(d)(v) read with Section 65(50b) of Finance Act, 1994. We reiterate that transporters in the present case are clearly covered by the definition of "Goods Transport Agency" hence assessees are liable to pay service tax being within the definition of "person liable to pay service tax" under Rule 2(d)(v). This is what we have also held in our judgment dated 2-2-2017 in *M/s. Oudh Sugar Mills Ltd. through Sri Shoorveer Singh* (supra), wherein this Court held as under :

"19. In relation to service provided or agreed to be provided by GTA 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, is such a category, any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage is included within term 'person liable for paying service tax'."

14. Tribunal while observing that transporters have not issued consignment note ignored the fact that under Section 65(50b) it has been further clarified that a consignment note or anything having similar nature but called by whatever name, would be within the ambit of Section 65(50b) of Finance Act, 1994. The term "consignment note" has no magical or technical meaning looking to the very purpose and intent of legislature in the matter. Mere fact that it is difficult to ascertain how much freight was paid for consignment by assessee would also not be of any help in the case in hand since that is not a reason for an otherwise applicability of aforesaid provisions to the facts of the case in hand.

15. We, therefore, answer aforesaid question in favour of assessee and set aside the judgment of Tribunal to the extent it has held otherwise. Appeal is allowed."

The above judgment of the Hon'ble High Court of Allahabad was upheld by the Hon'ble Supreme Court – 2019 (29) GSTL J71 (SC).

8.5 It is observed that the above judgments of the Hon'ble High Courts were pronounced in the context of the provisions of the Finance Act, 1994 as they existed prior to 01.07.2012. However, I find that the definition of Goods Transport Agency remains the same even post 01.07.2012. Further, the facts involved in the present appeal are similar to that in the cases referred above. Therefore, the ratio of the judgments referred to hereinabove, are applicable to the instant appeal.

8.6 In view of the above judgments of the Hon'ble High Courts of Madras and Allahabad, any person providing the services of transportation is covered by the term 'Goods Transport Agency' and accordingly, the recipient of such service is liable for payment of service tax under reverse charge in terms of Section 68 (2) of the Finance Act, 1994 and Notification No. 30/2012-ST dated 20.06.2012. Applying the ratio of the above judgments of the Hon'ble High Courts, I am of the considered view that the appellant, in the instant case, is liable to pay service tax, under reverse charge, in respect of the transportation services availed by them.

9. The appellant have also contested the demand on the ground of limitation. I find that the appellant had not disclosed the taxable value of the transportation services received by them in the returns filed by them. Further, the appellant have in respect of the transportation services received from the same transporters/in similar cases paid service tax during F.Y. 2015-16 and F.Y.2017-18. Therefore, it is clear that the appellant were aware that they were liable to pay service tax. However, despite being aware that in respect of such transportation services they were liable to pay service tax under reverse charge, the appellant has neither declared the taxable value of services nor had they paid the applicable service tax. They had, accordingly, suppressed the relevant facts from the department. Consequently, the extended period of limitation has been correctly invoked for raising demand for service tax.

10. Regarding the imposition of penalty, I find that the appellant had despite knowing that they were liable to pay service tax, had neither declared the taxable value of services in their ST-3 returns not paid the applicable service tax. Also considering the fact that the charge of suppression of fact is upheld, the penalty imposed under Section 78 of the Finance Act, 1994 is justified and does not call for any interference.

11. In view of the facts as discussed hereinabove, I uphold the impugned order and reject the appeal filed by the appellant.

12. 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.

(Akhilesh Kumar) 23rd June, 2022.
Commissioner (Appeals)
Date: .06.2022.

Attested:

(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.

BY RPAD / SPEED POST

To

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Appellant

The Assistant Commissioner,
CGST, Division- VII,
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.