



सत्यमेव जयते

आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065 - टेलिफैक्स 07926305136



DIN: 20231064SW0000555A0D

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1552/2023 / 6468 - 73
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-137/2023-24
दिनांक Date : 22-09-2023 जारी करने की तारीख Date of Issue 03.10.2023
- आयुक्त (अपील) द्वारा पारित
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of OIO No. 50/CGST/Ahmd-south/JC/MT/2022-23 दिनांक: 01.12.2022 passed by
Joint Commissioner, CGST, Ahmedabad South.
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s. Vijaya Logistics,
24, Om Shanti Nagar-2,
Near Bhamria Kuva,
Vatva-Lambha Road,
Lambha, Ahmedabad.

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 के 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 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 प्रक्रिया के दौरान हुई हो।

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



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

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

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

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

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

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

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित 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.

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

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

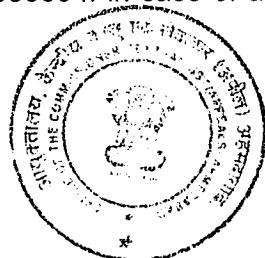
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 :-

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

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



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

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

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

- (4) न्यायालय शुल्कअधिनियम 1970 यथासंशोधित 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.

10 सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट), के प्रतिअपीलो 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)-

- (Section) खंड 11D के तहत निर्धारित राशि;
- इप लिया गलत सेनवैट क्रेडिट की राशि;
- बप 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.

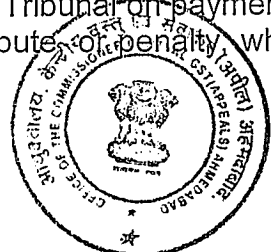
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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:

- amount determined under Section 11 D;
- amount of erroneous Cenvat Credit taken;
- amount payable under Rule 6 of the Cenvat Credit Rules.

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

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



ORDER IN APPEAL

The present appeal has been filed by M/s Vijaya Logistics, 24, Om Shanti Nagar-2, Near Bhamria Kuva, Vatva-Lambha Road, Lambha, Ahmedabad (hereinafter referred to as the "appellant") against Order in Original No. 50/CGST/Ahmd.-South/JC/MT/22-23 dated 01.12.2023 [hereinafter referred to as "impugned order"] passed by the Joint Commissioner, CGST & Excise, Ahmedabad South (hereinafter referred to as "adjudicating authority").

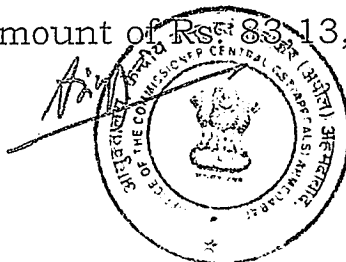
2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. BERPP1177FSD001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT), it was noticed that the appellant had substantial service income; however they did not pay service tax thereon. On the basis of the data received from Income tax department for the F.Y. 2015-16 and 2016-17 income earned by the appellant in the said period is as under:

Sr. No.	Period (F.Y.)	Income earned in Rs.
1.	2015-16	2,62,64,904/-
2.	2016-17	3,00,31,823/-

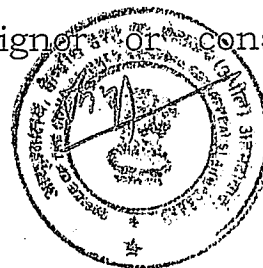
2.1. The appellant were called upon to submit copies of relevant documents for assessment for the period 2015-16 to June' 2017. However, the appellant failed to submit the required details/documents or offer any explanation/clarification regarding income earned by them.

3. Subsequently, the appellant were issued Show Cause Notice No. bearing F.No. STC/04-15/O&A/Vijaya/21-22 dated 21.04.2021 wherein it was proposed to:

- a) Demand and recover an amount of Rs. 83,13,184/- for



- the F.Y. 2015-16 and 2016-17 under provision to Sub Section (1) of Section 73 of the Finance Act, 1994
- b) (hereinafter referred to as the "Act") along with interest under section 75 of the Act.
 - c) Impose penalty under the provisions of Section 70, 77, and 78 of the Act.
4. The SCN was adjudicated vide the impugned order wherein:
- a) The demand of service tax amounting to Rs. 81,66,810/- was confirmed for the F.Y. 2015-16 and 2016-17 along with interest.
 - b) Penalty amounting to Rs. 81,66,810/- was imposed under 78 of the Act for non-payment of service tax by willful-suppressing the facts from the department with an intent to evade the payment of service tax.
 - c) Penalty amounting to Rs. 41,400/- was imposed.
 - d) Penalty amounting to Rs. 20,000/- under section 70 of the Act read with the Rule 7(c) of the Service Tax Rules, 1994 for delay filing of ST-3 Return for the period of October' 2016 to March' 2017.
5. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the following grounds:
- Transportation of goods in the capacity of Goods Transport Agency for consignor or consignee mainly to the Body Corporate and Partnership firms.
 - Service by way of giving on hire to a goods transport agency, a means of transportation of goods to GTA Service Provider.
 - Transportation of goods in the capacity of Goods Transport Agency for consignor or consignee to the



proprietary firms. This service is not covered in Rule 2(d)(B) of Service Tax Rules, 1994 read with Notification No. 30/2012-ST as amended issued under 68(2) of the Act. Hence in this case the appellant is liable to discharge service tax, however the taxable value of service is well below Rs. 10 lakhs and hence they are not liable to pay service tax in terms of Notification No. 33/2012-ST.

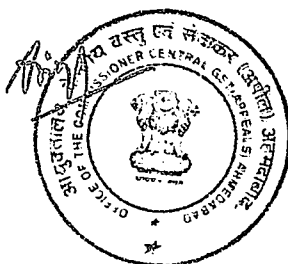
➤ Thus the appellant is very much under the bona fide belief that the income earned by them in relation to provision of aforesaid services are not attractive service tax and hence they are not liable to be registered and not liable to file ST-3 Returns.

➤ The appellant is owner of two trucks, which is quite clarified from the reference of Fixed Assets reflected in their Balance Sheet.

➤ From the 26AS it could be seen that, while making payment the customers of the appellant were deducting TDS under Section 194C of the Income Tax Act, 1961. TDS deducted under Section 194C for the services rendered by Contractors to the client.

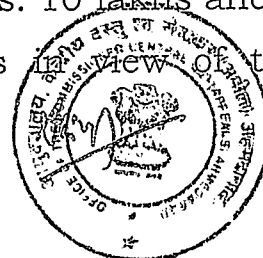
➤ Service provided to GTA service providers are the customers of the appellant, who have actually transported the goods for their customers and issued Consignment Notes wherein the appellant had no role to play. The appellant contend that they are not engaged in transportation of goods but engaged in supply of Trucks on rental basis to GTA service provider. The appellant claimed that the Trucks hire charges recognized by the appellant in their books as freight is exempted vide Sr. No. 22 of Notification No. 25/2012-ST.

➤ The department has assumed on the basis of details of ITR that the service provided by the appellant is taxable service and accordingly subject show cause notice was issued without any investigation.



- The appellant have filed ST-3 Returns, hence late fee charged under Section 70 read with Rule 7C is not justifiable.
- Penalty of Rs. 41,500 imposed without quoting any offence or under which section the said penalty is imposed.
- (i) Service provided to Body corporate and Partnership Firms in the capacity of GTA is not liable to Service Tax in terms of Notification No. 30-2012-ST issued under Section 68(2) of the Act read with Rule 2(d)(B) of Service Tax Rules, 1994. (ii) Service provided to GTA is exempted vide Sr. No. 22 of Notification No. 25/2012-ST. Their Service provided to Proprietorship firm in the capacity of GTA is taxable service in terms of Section 68(1) of the Act, however in terms of Notification No. 26/2012-ST read with Notification No. 33/2012-ST they are entitled for threshold exemption of Rs. 10 Lakhs. Thus the appellant is of bona fide belief that none of their service attracts service tax and accordingly there is not intent to evade any payment of tax. Hence the appellant contend that they had not committed any offence of the nature as prescribed in section 78 of the Act. The appellant are also liable to pay interest under section 75 of the Act as they are not liable to pay service tax.

6. Personal Hearing in the case was held on 01.09.2023. Shri Vijay Thakkar, Consultant, appeared on behalf of appellant for the hearing and reiterate the submission in the appeal. He submitted that the appellant provided transport service to body corporate and partnership firms as GTA and issued consignment notes. In some other cases, the appellant provided transport services to another GTA on rent basis. He submitted that the services rendered by the appellant are exempted from service tax vide serial number 22 of Notification No. 25/2012-ST. he requested to set aside the impugned order, since the remaining income provided to individuals is less than Rs. 10 lakhs and the appellant is eligible for threshold exemptions ~~in view of~~ the income in



previous year being less than Rs. 10 lakhs.

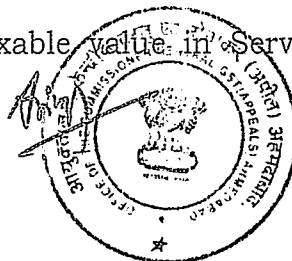
7. The appellant submitted following documents (a) Form 26AS (Annual Tax Statement under Section 203AA of the Income Tax Act, 1961) certificate for F.Y. 2015-16 and F.Y. 2016-17 for the justification of the effect that TDS was deducted under Section 194C, which is in relation to payment to contractors and sub-contractors, (b) Form 3CB and 3CD in respect of Audit Report under section 44AB of the Income Tax Act, 1961 for the F.Y. 2015-16 and F.Y. 2016-17, (c) Balance Sheet and Profit & Loss Account for the F.Y. 2015-16 and F.Y. 2016-17, (d) ST-3 Returns for F.Y. 2015-16 and F.Y. 2016-17 (e) Specimen copies of Consignment Notes, (f) copy of freight receipt ledger for F.Y. 2015-16 and F.Y. 2016-17.

8. I have gone through the facts of the case, submission made in the Appeal Memorandum, the submission made at the time of personal hearing and the material available on record. The issue before me for decision is whether the impugned order passed by the adjudicating authority confirming demand of service tax amount of Rs. 81,66,810/- along with interest and penalties, considering the facts and circumstances of the case, is legal and proper or otherwise. The dispute pertains to the period F.Y. 2015-16 and F.Y. 2016-17.

9. It is observed that the demand of service tax has been raised merely on the basis of the data received from the Income Tax department. However, the data received from the Income Tax department cannot form the sole ground for raising of demand of service tax.

9.1 I find in 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.

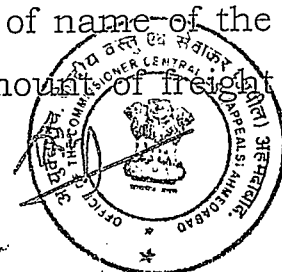
3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner/Chief Commissioner(s) may devise a suitable mechanism to 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."

9.2 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.

10. The appellant submitted Form No. 3CD under Income Tax Act, 1961. As per 3CD statement and the adjudicating order it is found that the appellant is engaged in Transport Services, freight transport by Road. In the submission made by the appellant it is evident that the appellant is engaged in supplying three types of service, which are described as under:

- (i) Service by giving their vehicle to GTA service provider;
- (ii) Service as GTA service provider to Partnership Firm and Body corporate;
- (iii) Service as GTA service provider to proprietorship firms;

11. In respect of supply of service mentioned above at sr. no. (i) it is observed on the basis of documents submitted by the appellant viz. sales registers (freight register) for the impugned period containing date wise details of name of the customers, to whom service was provided and amount of freight received from

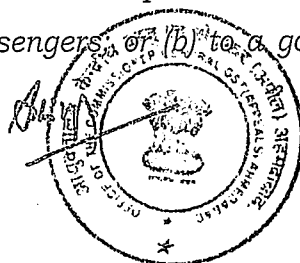


the said customers; sample consignment notes issued to consignors e.g. M/s Metro Roadways, Ahmedabad (a GTA service provider). The appellant submitted balance sheet containing details of fixed assets which includes Trucks clarifying that the appellant is owner of trucks. The appellant has also submitted Form 26AS containing the details of TDS under Section 194C of the Income Tax Act, 1961 by the customers of the appellant. On verification of the Form 26AS for F.Y. 2015-16 and F.Y. 2016-17 the contention of the appellant is established that they are providing Trucks on rental basis and for that provision of service they are receiving consideration or freight from the recipient of service i.e. GTA service providers.

The above discussion in respect of supply of service mentioned above at sr. no. (i) makes it amply clear the effect that the appellant are engaged in supplying of service by way of renting their vehicle to GTA service provider. Service provided to GTA service providers are the customers of the appellant who have actually transported the goods for their customers wherein the appellant seems to have no role to play. The GTA service providers who are the customers of the appellant would collect freight from their customers and their customers are liable to discharge service tax under RCM for the freight amount shown in the Consignment notes issued by the customers of the appellant, who actually transported the goods in the Trucks supplied by the appellant on rental basis.

12. The appellant contended that the service provided by the appellant to the customers who are actually GTA service providers collecting freight from their customers is exempted in terms of sr. no. 22 of Notification No. 25/2012-ST dated 20.06.2012 the relevant text of the statute is reproduced as under:-

22. Services by way of giving on hire - (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers or (b) to a goods transport



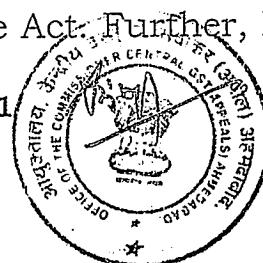
agency, a means of transportation of goods;

12.1 From the above It is very much clear that the service of providing vehicles on hire basis to another GTA service providers is covered under entry no. 22 of Notification No. 25/2012-ST dated 20.06.2012 and on the basis of discussion I find that this entry makes the appellant exempted as they are providing service by way of giving vehicles on hire to GTA service providers.

13. As regards to (ii) service as GTA service provider to the Partnership Firm and Body corporate, it is contended by the appellant that the said service attracts service tax under RCM i.e. in the hand of service recipient only. The appellant claimed that that service is provided to Body corporate and partnership firms, which are only liable to pay service tax under Reverse Charge Mechanism (RCM) in terms of Notification No. 30/2012-ST dated 20.06.2012.

13.1 In support of the submission that the appellant had provided services to Body corporate and partnership firms they have furnished documents viz. sales registers (freight register) for the impugned period; sample consignment notes issued to body corporate and partnership firms e.g. Color Enterprises, M/s K.K. Enterprises, M/s Techno Industries Ltd. M/s Sintex Infra Projects Ltd. etc. On verification of the above documents I am of the considered view that the appellant are receiving freight for rendering service from body corporate and thus in that case have rightly claimed that body corporate and partnership firms are liable to pay service tax and not the appellant in terms of the Notification No. 30/2012-ST.

14. In respect to sr. no. (iii) service as GTA service provider to proprietorship firms, I agree with the contention of the appellant that the said service attracts service tax in the hand of appellant in terms of the Section 68(1) of the Act. Further, I also agree with

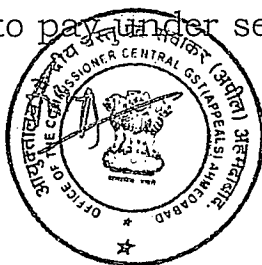


the claim made by the appellant that the abatement @ 75% is available to GTA service provider in terms of Notification No. 26/2012-ST dated 20.06.2012 and only the extent of 25% of the value of the taxable service is taxable. In that kind of services provided to body corporate Form 26AS for F.Y. 2015-16 and F.Y. 2016-17 the contention of the appellant is established that they are providing Trucks on rental basis and for that provision of service they are receiving consideration or freight from the recipient of service i.e. GTA service providers.

15. In view of the above discussion I find that the appellant had provided service to GTA Service providers; to body corporate and partnership firm; to proprietorship firms and collected freight from the recipients which are tabulated as under:

Particulars	2015-16	2016-17
Service supplied to body Corporate	2,07,99,985	2,40,91,650
Service supplied to Partnership Firms	30,73,370	21,30,385
Service supplied to GTA	22,64,049	36,09,285
Service supplied proprietorship firm	1,27,500	2,00,503
Total	2,62,64,904	3,00,31,823

16. The appellant is providing service to Proprietorship firms and collected freight amounting to 1,27,500/- in F.Y. 2015-16, and Rs. 2,00,503/- in F.Y. 2016-17. In terms of Notification No. 26/2012 the taxable value after abatement comes only Rs. 31,875/- and Rs. 50,126/- in the respective period and as the value is well below Rs. 10 lakhs in the year 2015-16 and in 2016-17 and also the previous year of F.Y. 2015-16 the appellant is entitled to take exemption of threshold value of Rs. 10 lakhs in view of Notification No. 33/2012-ST. The service provided by the appellant to proprietorship firms will not covered under Notification No. 30/2012 issued under section 68(2) of the Act, however the appellant will be liable to pay under section 68(1) of



the Act. The appellant is entitled to threshold exemption as per the Notification NO. 33/2012-ST for the service rendered to proprietorship firms.

17. In view of the above discussion, I agree with the claim of the appellant and find that none of the service provided by the appellant attracts service tax. The appellant is of bonafide belief that the income earned by the appellant in relation to the provisions of aforesaid services are not attracting any service tax. The appellant have filed ST-3 Returns the details of which are tabulated as under:

Particulars	Date of filing of ST-3 Returns
April, 2015 to September, 2015	25-10-2015
October, 2015 to March, 2016	23-04-2016
April, 2016 to September, 2016	25-10-2016
October, 2016 to March, 2017	19-08-2017

18. Accordingly, in view of my foregoing discussions, I set aside the impugned order passed by the adjudicating authority for being not legal and proper, and allow the appeal filed by the appellant.

19. Since the demand of service tax is not sustainable on merits, there does not arise any question of interest or penalty in the matter.

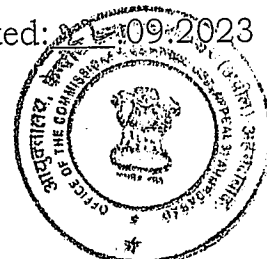
20. अपीलकर्ता द्वारा दायर अपील का निपटान उपरोक्त तरीके से किया जाता है।

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

(Shiv Pratap Singh)

Commissioner (Appeals)

Dated: 22-09-2023



Attested

(Amendra Kumar)

Superintendent(Appeals)

CGST Ahmedabad.

BY RPAD/ SPEED POST

To

M/s Vijaya Logistics,
24, Om Shanti Nagar-2,
Near Bhamria Kuva,
Vatva-Lambha Road,
Lambha, Ahmedabad

Appellant

The Joint Commissioner
CGST & Central Excise
Ahmedabad South.

Respondent

Copy to:-

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner Central GST, Ahmedabad South.
3. The Joint Commissioner, CGST, Ahmedabad South.
4. The Asstt. Commissioner (HQ System) Central GST, Ahmedabad South (for uploading the OIA).

5. Guard File.

6. P.A. File.

