



सत्यमेव जयते

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

**By SPEED POST**

DIN:- 20240164SW0000999AA0

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| (क) | फ़ाइल संख्या / File No.   | GAPPL/COM/STD/429/2023 } 1034 - 39   |
| (ख) | अपील आदेश संख्या और दिनांक / Order-In -Appeal and date  | AHM-EXCUS-001-APP-235/23-24 and 25.01.2024   |
| (ग) | पारित किया गया / Passed By  | श्री ज्ञानचंद जैन, आयुक्त (अपील)<br>Shri Gyan Chand Jain, Commissioner (Appeals)                               |
| (घ) | जारी करने की दिनांक / Date of Issue   | 29.01.2024   |
| (ङ) | Arising out of Order-In-Original No. 376/AC/Div-I/HKB/2022-23 dated 31.01.2023 passed by The Assistant Commissioner, CGST, <u>Division-I</u> , Ahmedabad South. |  |
| (च) | अपीलकर्ता का नाम और पता / Name and Address of the Appellant   | The Assistant Commissioner, CGST, Division-I, Ahmedabad South.<br>1 <sup>st</sup> Floor, GST Bhavan, Ahmedabad |
| (छ) | प्रतिक्रियादाता का नाम और पता / Name and Address of the Responded   | M/s. Ravi Bharatkumar Gupta, A/9, Guptanagar, Near Ganesh Temple, Mahavirnagar, Amraiwadi, Ahmedabad - 380026. |

कोई व्यक्ति इस अपील-आदेश से असंतोष 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 प्रक्रिया 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 के लिए माल के 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.

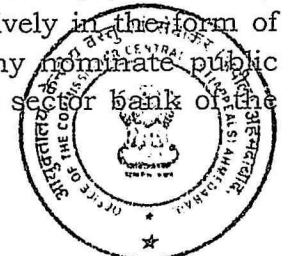
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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 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 अपील के मामले में कर्तव्यमांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रूपए 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।

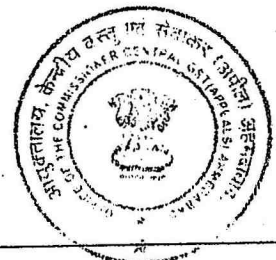
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 following appeal has been filed under section 84(1) of the Finance Act (hereinafter referred as 'the Act') by the Assistant Commissioner, CGST & C. Ex., Division - I, Ahmedabad South Commissionerate (hereinafter referred as 'appellants') in compliance to Order-in-Review No. 10/2023-24 dated 27.04.2023 passed by Principal Commissioner, Central GST, Ahmedabad South (hereinafter referred to as. the "the reviewing authority" also) against Order-in-Original No. 376/AC/Div.-I/HKB/2022-23 dated 31.01.2023 (hereinafter referred as "the impugned order") passed by the Assistant Commissioner, CGST, Division - I, Ahmedabad South (hereinafter referred as "the adjudicating authority") in the case of M/s. Ravi Bharatkumar Gupta, A/9, Guptanagar, Near Ganesh Temple, Mahavirnagar, Amraiwadi, Ahmedabad, Gujarat-380026 (hereinafter referred as "the Respondents").

| Appeal No. & Date                              | Review Order No. & Date     | Order-In-Original No. & Date               |
|--|-----------------------------|--|
| GAPPL/COM/STD/429/2023-APPEAL Dated 01.05.2023 | 10/2023-24 dated 27.05.2023 | 376/AC/Div.-I/HKB/2022-23 dated 31.01.2023 |

2. Briefly stated, the facts of the case are that the respondents, having PAN No. BCSPG4904L had earned substantial service income during the F.Y. 2014-15 to 2016-17. On scrutiny of the data received from Income Tax department, it was noticed that the respondents had earned an income of Rs. 11,90,820/- during the F.Y. 2014-15 and Rs. 20,43,360/- during the F.Y. 2016-17. Accordingly, it appeared that the respondent had earned the said substantial income by way of providing taxable services but had neither obtained Service Tax registration nor paid the applicable service tax thereon. The respondent were called upon to submit copies of required



documents for assessment for the said period. However, the respondent had not responded to the letters issued by the department.

2.1 Subsequently, the respondents were issued Show Cause Notice No. V/15-75/Div-I/Ravi Bhartkumar Gupta/2020-21 dated 21.12.2020 wherein:

- a) Demand and recover an amount of Rs. 4,53,689/- under proviso to Sub Section (1) of Section 73 of the Act along with interest under section 75 of the Act.
- b) Impose penalty under the provisions of Section 77(1) and 78 of the Act.

2.2. After considering the submission of the respondent the adjudicating authority vide the impugned order dropped the proceedings initiated against the respondent vide the show cause notice.

2.3 The Principal Commissioner, Central GST, Ahmedabad South, in exercise of the power conferred on him under subsection 1 of Section 84 of the Act in order to satisfy himself as to the legality and propriety of the impugned order, directed the adjudicating authority vide review order No. 10/2023-24 dated 27.04.2023 to file an appeal before undersigned within stipulated period for determination of the legality and correctness of the impugned order on the following grounds:

- The adjudicating authority while allowing the benefit of exemption under Sr. No. 23(b) of the Notification No. 25/2012-S.T. dated 20.06.2012 has not analyzed the conditions of the exemption Notification No. 25/2012-S.T. dated 20.06.2012 in a proper perspective.



➤ The relevant provision of the Notification No. 25/2012-ST dated 20.06.2012 are extracted as below:

*"The Central Government, being satisfied that it is necessary in the public interest, hereby exempts the following taxable services, from the whole of the service tax leviable thereon under section 66B of the said Act, namely:*

*23. Transport of passengers, with or without accompanied belongings, by –*

*(a) air, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal;*

*(b) a contract carriage for the transportation of passengers, excluding tourism, conducted tour, charter or hire; or*

*(c) ropeway, cable car or aerial tramway;*

➤ Further the above notification has been amended vide Notification No. 06/2014- ST dated 11.07.2014. The relevant provisions of the said Notification are extracted below:

*(vii) in entry 23, for item (b), the following item shall be substituted, namely: "(b) non-air conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or".*

➤ It can be inferred from the aforementioned Notification that exemption in respect of contract carriage is available if the vehicle is non-air-conditioned. The adjudicating authority in his finding at para 20 of the OIO found that:



20. "I find that as per the documents submitted hereinabove by the notice, they were engaged in the business of "Passenger Travel Service" during the period from 01.04.2014 to 31.03.2017 and they had owned non-air-conditioned car "Chervolet Enjoy" Reg. No. GJ 27AH-6317 and they had hired a car Reg. No. GJ-27-C9115 for passenger Travel Service and used both the car for movement of passenger from one point to another point. They had carried the particular passengers from Ahmedabad to Baroda, vice a versa and had an implied contract with the passengers. Since they were involved in providing service to "Contract Carriage", they were not liable for Service Tax."

➤ However, on the basis of online search of specification of "Chervolet Enjoy" car, it is found that "even the standard variant of enjoy comes with dual AC and rear AC vents."

➤ In the instant OIO, the Adjudicating authority has erred in allowing the exemption of contract carriage service provided by the service provider only on the basis of an affidavit filed by the service provider without verifying the authenticity of the same. It is found that the "Chervolet Enjoy" car comes with air conditioned facility and the exemption under Sr. No. 23(b) of the Notification No. 25/2012-ST dated 20.06.2012 is available for non air-conditioned vehicles only. Thus, the adjudicating authority has allowed the benefit of exemption on the basis of incorrect affidavit filed by the service provider which is legally incorrect.

4. The respondent were called upon to file a memorandum of cross objection against the appeal. Personal hearing in the case was held on 17-01-2024. Shri Ramesh D. Prajapati, Tax Consultant, appeared for personal hearing on behalf of the respondent and reiterated the written submissions in the cross



objection to the departmental appeal. He requested to uphold the order passed by the adjudicating authority.

5. I have carefully studied the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, and documents available on record and considered the submissions by both sides. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, dropping the proceedings initiated against the respondent vide the show cause notice (supra), in the facts and circumstance of the case, is legal and proper or otherwise.

6. In the submission of the appellant they have contended that the adjudicating authority accepted the contention of the respondent granting exemption under sr. no. 23(b) of Notification No. 25/2012-ST dated 20.06.2012 without analyzing the conditions specified in the exemption notification. They further contended that sr. no. 23(b) of the said Notification implies that contract carriage exemption applies to non-air-conditioned vehicles. However, it was discovered by the reviewing authority on the basis of online search of specification of "Chervolet Enjoy" car, that even the standard variant comes equipped with dual AC and rear AC vents, raising questions about the eligibility for the exemption.

7. In the objection against the appeal filed by the department the respondent have submitted that they had purchased cars meant for trip [ferra] from Ahmedabad to Baroda and vice versa for local passengers and they don't require AC car and have removed AC system from 'Chervolet Enjoy' car due to average condition. For students of schools they hired Auto Van and Auto Rikshaw on contract basis.





8. I have carefully gone through the submission of appellant and respondent and find that the respondent have not produced any invoice, bill or challan issued to service recipient regarding providing of service of transportation of school students and daily local passangers travelling from Ahmedabad to Baroda and vice a versa. I also find that the respondent failed to submit any documents regarding cars are as "non-air-conditioned". From reading the provision under sr. no. 23(b) of the Notification 25/2012-ST dated 20.06.2012, it is clear that contract carriage exemption for transportation of passengers applies only to non-air-conditioned vehicles. I also find appellant's submission correct in respect of matter that even the standard variant of "Chervolet Enjoy" car, comes equipped with dual AC and rear AC vents. Therefore, the respondent's service is not covered under sr. no. 23(b) of the Notification No. 25/2012-ST dated 20.06.2012, as the "Chevrolet Enjoy" car used by the respondent is an air-conditioned vehicle. Hence, the respondent are held liable for payment of service tax of Rs. 4,53,689/- on the taxable value of Rs. 32,34,180/- during F.Y. 2014-15 to 2016-17 along with of interest and penalty as proposed in the Show Cause Notice.

9. In view of the above discussion, I allow the appeal filed by the appellant.

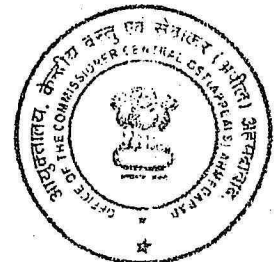
10. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

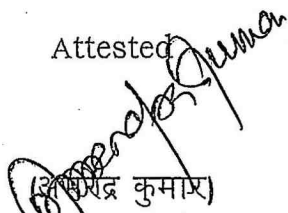


ज्ञानचंद जैन  
आयुक्त (अपील्स)

Date : 25.01.2024



Attested

  
(रविभरत कुमार)  
अधीक्षक (अपील्स)

सी.जी.एस.टी, अहमदाबाद

**By RPAD / SPEED POST**

To,  
The Assistant Commissioner,  
Central GST, Division-I,  
Ahmedabad South.

Appellant

M/s. Ravi Bharatkumar Gupta,  
A/9, Guptanagar,  
Near Ganesh Temple,  
Mahavirnagar, Amraiwadi, Ahmedabad.

Respondent

Copy to :

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone
2. The Principal Commissioner, CGST, Ahmedabad South
3. The Assistant Commissioner, Central GST, Division-I, Ahmedabad South.
4. The Deputy/Assistant Commissioner (RRA), Ahmedabad South
5. The Assistant Commissioner (HQ System), CGST, Ahmedabad South (for uploading the OIA)
6. ~~Guard File~~
7. PA file

