



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:- 20240264SW0000555FA4

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/4272/2023 / 2202 - 46
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-288/2023-24 and 26.02.2024
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	28.02.2024
(ङ)	Arising out of Order-In-Original No. MP/318/DC/Div-IV/2022-23 dated 17.03.2023 passed by The Deputy Commissioner, Central GST, Division-IV, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Balaji Goods Carriers, Nr. Mittal Chamber, Opp. Way Weight Restaurant, Narol Char Rasta, Narol, Ahmedabad - 382405

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, 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 : -

(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 शुल्क के केंद्र 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 रुपये 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2ndfloor, 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 और 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 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."

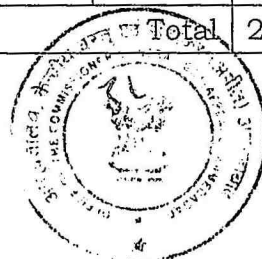


ORDER-IN-APPEAL

The present appeal has been filed by M/s Balaji Goods Carriers, Near Mittal Chamber, Opp. Way Weight Restaurant, Narol Char Rasta, Narol, Ahmedabad- 382405 (hereinafter referred to as 'the appellant') against Order in Original No. MP/318/DC/Div-IV/22-23 dated 17.03.2023 [hereinafter referred to as 'impugned order'] passed by the Deputy Commissioner, CGST & CEx, Division-IV, Ahmedabad South Commissionerate [hereinafter referred to as 'adjudicating authority'].

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. ACWPS4354BST001 and engaged in providing transportation services. As per the information received from the Income Tax department discrepancies were observed in the total income declared by the appellant in their Income Tax Return (ITR) when compared with Service Tax Returns (ST-3) filed by them for the period F.Y. 2015-16 & F.Y. 2016-17. Accordingly, in order to verify the said discrepancy, the appellant were calling for the details of services provided during the period. But they didn't submit any reply. Further, the services provided by the appellant during the relevant period were considered taxable under Section 65B(44) of the Finance Act, 1994 and the Service Tax liability was determined on the basis of value of 'Sales of Services' under Sales/Gross Receipts from Services (Value from ITR) or "Total amount paid/credited under Section 194C, 194I, 194H & 194J of Income Tax Act, 1961" shown in the ITR-5 and Taxable Value shown in ST-3 return for the relevant period as per details below :

Sr. No.	Period (F.Y.)	Differential Taxable Value (in Rs.)	Rate of abatement (Transporter)	Taxable value after abatement	Rate of Service Tax incl. Cess	Service Tax liability to be demanded (in Rs.)
1.	2015-16	28,41,505/-	70%	8,52,452/-	14.5%	1,23,605/-
2.	2016-17	30,92,436/-	70%	9,27,731/-	15%	1,39,159/-
Total						2,62,764/-



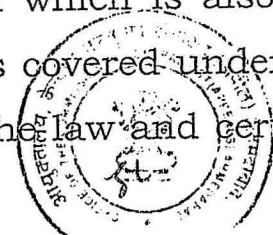
3. The appellant was issued Show Cause Notice No. IV/DIV-IV/SCN-181/20-21 dated 21.12.2020 (in short SCN) proposing to demand and recover Service Tax amounting to Rs.2,62,764/- under proviso to Section 73(1) of Finance Act, 1994 along with applicable interest and penalties.

4. The SCN was adjudicated *ex-parte* vide the impugned order wherein :

- Service Tax demand of Rs.2,62,764/- was confirmed under Section 73(1) of the Finance Act, 1994 alongwith interest under Section 75 of the Finance Act, 1994.
- Penalty was imposed but not ascertained under Section 77(1) of the Finance Act, 1994.
- Penalty of Rs.10,000/- was imposed under Section 77(2) of the Finance Act, 1994.
- Penalty of Rs.2,62,764/- was imposed under Section 78 of the Finance Act,1994 with option for reduced penalty in terms of clause (ii).

5. Aggrieved by the impugned order, the appellant has preferred this appeal on following grounds:

- The appellant is a sole proprietorship firm, engaged in the business of transport of goods by road/goods transport agency service and is bearing registration no. ACWPS4354BST001.
- They submitted that it was clarified that certain part of income from Sale of Service to body corporate were earned from transportation of goods via road which is also said as goods transport agency (GTA) which is covered under reverse charge mechanism as defined under the law and certain part



of income from sale of service to other unregistered assessee were earned which is covered under Forward Charge Mechanism. Due to this reason value of services rendered to body corporate is not included in Service Tax Return; however income tax return has included both services rendered to body corporate and unregistered assessee. The Appellant while filing Service Tax Return has not added supply to Body Corporate in his return and declared only sales value of unregistered assessee and proper tax liability has been discharged accordingly.

- They further submitted that for the F.Y. 2016-17 & 1st quarter of F.Y.2017-18 (ie. till 30.06.2017) the audit was conducted by Service Tax Department on 07.12.2021 and all para was settled between the department and appellant and required recovery was also made, so there should be no question of issuing notice for the same year for which audit is conducted. They produced the audit report for reference.
- They requested to quash and set aside the impugned order on the above grounds.

6. Personal Hearing in the case was held on 12.02.2024. Shri Vatsal Sharma, Chartered Accountant, appeared for personal hearing on behalf of the appellant. He stated that the liability in Forward Charge has been discharged while in RCM they are not liable to pay. He requested for two days time to submit additional documents, if required. He stated that F.Y. 2016-17 audit was already conducted. At the time of personal hearing, he submitted ST-3 copies of F.Y.2015-16, Sales Register, Sample Invoices, Audit Report for F.Y. 2016-17, ITR, Form 26AS. If any additional documents needs, he requested to inform him.

7. I have carefully gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions made during personal hearing and the facts available on records.

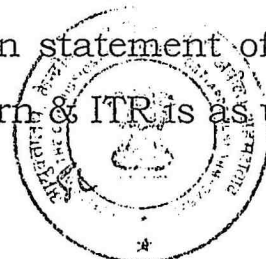


The issue before me for decision in the present appeal is whether the demand for Service Tax amounting to Rs.2,62,764/- confirmed alongwith interest and penalties vide the impugned order in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to the period F.Y. 2015-16 & F.Y. 2016-17.

8. It is observed from the case records that the appellant are registered under Service Tax and have filed their half yearly Service Tax Returns (ST-3) during the period F.Y. 2015-16 & F.Y.2016-17. However, the SCN in the case was issued only on the basis of data received from the Income Tax department and impugned order had also been issued *ex-parte*.

8.1 I find the appellant is a sole proprietorship firm, engaged in the business of transport of goods by road/goods transport agency service and registered under Service Tax vide Registration No. ACWPS4354BST001. They have submitted copies of the Service Tax Return, Sales Ledger, Reconciliation Statement for Service Tax liability in RCM & FCM, Sample Invoices, ITR, Form 26AS, Final Audit Report -CE/ST-268/2020-21 dated 23.12.2021. They also claimed that in terms of Notification No. 30/2012-ST dated 20.06.2012 the recipient of service would be liable to pay service Tax.

8.2 Upon examining the above mentioned submissions and facts of the case, I find that the appellant have already discharged service tax on Rs. 22,06,526/- under Forward charge method under Section 68(1) of the Finance Act, 1994, where they charged and collected service tax from only five following service recipients (1) M/s Renuka Marketing, (2) M/s Sai Marketing, (3) M/s Sai Plastic Industries, (4) Shree Shayam Trading Co. and (5) M/s Jagannath Enterprises, which is evident from the scrutiny of periodical ST-3 returns and sample copies of invoices submitted by the appellant. The summary of reconciliation statement of service tax liability in RCM & FCM, Service Tax Return & ITR is as under:



Sr. No.	Period (F.Y.)	Income declared in ITR	Income declared in STR	Differential Taxable Value (in Rs.)	Reconciliation			
					Taxable Value under RCM	Taxable Value under FCM	Service Tax paid on the Taxable Value	Difference
1.	2015-16	50,48,031	22,06,526	28,41,505	28,41,505	22,06,526	22,06,526	0
2.	2016-17	62,07,764	31,15,328	30,92,436	The department has already conducted audit for this period and all Revenue Para has been settled.			

9. In respect to the demand confirmed on the taxable value amounting to Rs. 30,90,436/- pertaining to the service provided by the appellant during the F.Y. 2016-17, I find that this demand is not tenable as the appellant's accounts have already been verified by the Service Tax Audit, Ahmedabad and all objections raised by the audit team was already settled. Hence the appellant is not liable to pay service tax in F.Y. 2016-17.

10. As regards to the impugned amount Rs. 28,41,505/- during F.Y. 2015-16, I find the appellant have submitted Sales Register, sample L/R copies/Consignment note copies pertaining to service provided to the recipients, who are liable to pay service tax under RCM.

“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;

On reading the said definition of Goods Transport Agency and submission made by the appellant, I find that the appellant are providing service of Goods Transport Agency. Further, I find that the payer of freight is liable to pay service tax in the light of Notification No. 30/2012-ST dated 20.06.2012. After verification of consignment notes copies submitted by the appellant, I find that in these cases, the appellant provided service to those firms which are liable to pay service tax under RCM in terms of Notification No. 30/2012-ST dated 20.06.2012. Hence, the appellant are not held liable to pay service tax on the income amounting to Rs. 28,41,505/- during the F.Y. 2015-16. Due to the above finding, I



am of the considered opinion that the appellant are not liable for service tax. Consequently the question of interest and penalties also does not arise.

11. In view of above, I hold that the impugned order passed by the adjudicating authority confirming demand of Service Tax, in respect of income received by the appellant during the Financial Years 2015-16 and 2016-17, is not legal and proper and deserve to be set aside. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

12. Accordingly, the impugned order is set aside and the appeal filed by the appellant is allowed.

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

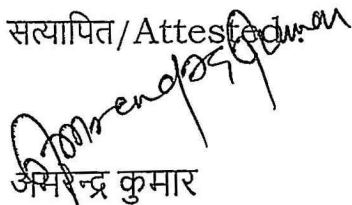
The appeal filed by the appellant stands disposed of in above terms.



ज्ञानचंद जैन
आयुक्त (अपील्स)

Dated: 26th February, 2024

सत्यापित/Attested



अमरेंद्र कुमार
अधीक्षक (अपील्स)

सी जी एस टी, अहमदाबाद

By REGD/SPEED POST A/D



To,
M/s Balaji Goods Carriers,
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Opp. Way Weight Restaurant,
Narol Char Rasta, Narol,
Ahmedabad- 382405.

Copy to :

1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST and Central Excise, Ahmedabad South.
3. The Deputy/Assistant Commissioner, CGST & CEX, Division - IV, Ahmedabad South Commissionerate.
4. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication of OIA on website.
- ✓ 5. Guard file.
6. PA File.

