



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeals Ahmedabad Commissionerate  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015  
GST Bhavan, Ambawadi, Ahmedabad-380015  
Phone: 079-26305065 - Fax: 079-26305136  
E-Mail : [commrappl1-cexamd@nic.in](mailto:commrappl1-cexamd@nic.in)  
Website : [www.cgstappealahmedabad.gov.in](http://www.cgstappealahmedabad.gov.in)



आजादी का  
अमृत महोत्सव

**By SPEED POST**

DIN:- 20240264SW000049984D

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/4445/2023 / 2024 - 2021
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-289/2023-24 and 27.02.2024
(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. 365/DC/Bakulaben/Div-8/A'BAD SOUTH/PMT/2022-23 dated 01.03.2023 passed by The Deputy Commissioner (Technical), Central GST, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Bakulaben Amrutbhai Prajapati, 23, Sarvodaya Nagar Society, Near Ujala Hotel, Sarkhej, Ahmedabad - 382210

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 प्रकिया के दौरान हुई हो।

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

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



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

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

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

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

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

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

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

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

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

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



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

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

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

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

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

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

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति 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."



अपीलिय आदेश/ ORDER-IN-APPEAL

The present appeal has been filed by M/s Bakulaben Amrutbhai Prajapati, 23, Sarvodaya Nagar Society, Near Ujala Hotel, Sarkhej, Ahmedabad - 382210 [hereinafter referred to as "the appellant"] against Order in Original No. 365/DC/Bakulaben/Div-8/A'bad South/PMT/2022-23 dated 03.03.2023 [hereinafter referred to as "the impugned order"] passed by the the Deputy Commissioner (Technical), CGST & CEx, Ahmedabad South Commissionerate [hereinafter referred to as "the adjudicating authority"].

2. Briefly stated, the facts of the case are that the appellant were not registered under Service Tax and were holding PAN No. AGXPP1036E. As per information received from the Income Tax Department, it was observed that during the period F.Y. 2015-16, the appellant had earned substantial service income by way of providing taxable services, but had neither obtain Service Tax Registration nor paid Service Tax thereon. Accordingly, in order to seek information, letters dated 23.09.2020 and 15.10.2020 were sent to the appellant calling for the details of services provided during the period. But they didn't submit any reply. Further, the jurisdictional officers considering the services provided by the appellant as taxable determined the Service Tax liability on the basis of value of 'Sales of Services' under Sales/Gross Receipts from Services (Value from ITR) and Form 26AS for the relevant period as per details below :

Sr. No.	Period (F.Y.)	Differential Taxable Value as per Income Tax Data (in Rs.)	Rate of Service Tax incl. Cess	Service Tax liability to be demanded (in Rs.)
1.	2015-16	25,19,170/-	14.5%	3,65,279/-

3. The appellant was issued Show Cause Notice No. CGST/WS0805/O&A/TPD(15-16)/AGXPP1036E/2020-21 dated 22.12.2020 (in short SCN) proposing to demand and recover Service Tax amounting to Rs.3,65,279/- under proviso to Section 73 (1) of Finance Act, 1994 along with interest under Section 75 of the Act. The SCN also proposed imposition of penalty under Section 77(1)(c), Section 77(2) and Section 78 of the Finance Act, 1994.

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



- Service Tax demand of Rs.3,65,279/- 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.3,65,279/- 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 engaged in the business of providing services as goods transport agency with trade name as M/s. Aai Krupa Transport.
- They claim that their services provided as goods transport agency are covered under the Reverse Charge Mechanism vide Notification No. 30/2012-ST dated 20.06.2012.
- Additionally they submitted that the value of total Supplies by way of transport income during the period is Rs.25,19,170/-, out of the total amount the amount of Supplies to body corporate and person liable to pay Service tax under RCM is Rs 16,88,700/- so the remaining amount of transport income is Rs 8,30,470/-.
- As per the notification No 33/2012-ST exempts taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under section 66B of the said Finance Act.

6. Personal Hearing in the case was held on 19.02.2024. Shri Aman Rathi, Chartered Accountant, appeared for hearing online on behalf of the appellant. He reiterated the contents of the written submission and stated that his client is GTA and the entire liability is on receipts under RCM.

7. I have carefully gone through the facts of the case available on record, grounds of appeal in the appeal memorandum, oral submissions made during personal hearing and additional submission, the impugned order passed by the adjudicating authority





and other case records. The issue before me for decision in the present appeal is whether the demand of service tax amounting to Rs.3,65,279/- confirmed under proviso to Section 73 (1) of Finance Act, 1994 alongwith interest, and penalties vide the impugned order passed by the adjudicating authority in the facts and circumstances of the case is legal and proper or otherwise. The demand pertains to the period of F.Y. 2015-16.

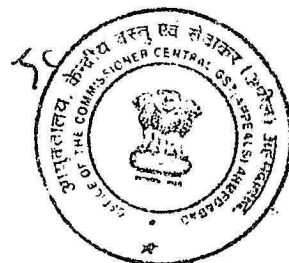
9. I find that the SCN was issued on the basis of third party data without any verification and the impugned order has been decided *ex-parte*.

9.1 I find that the appellant claimed that they were engaged in the business of providing services by way of Goods Transport Agency and had received amounting to Rs.25,19,170/- by carting/transportation of bricks by road during the period of F.Y.2015-16. They have declared their carting / transportation income amounting to Rs.25,19,170/- as Sale of Services in their Income Tax Return and the same amount is reflected in their P&L A/c.

9.2 They strongly contended that they provided the services to body corporate amounting to Rs.16,88,700/- & the remaining amounting to Rs.8,30,470 to non-body corporate/individuals and the liability of Service Tax arising out of on the GTA service rendered to the Body corporate is to be borne by the service recipient under Reverse Charge Mechanism (RCM) in terms of Notification No. 30/2012-ST dated 20.06.2012 and the services rendered to non-body corporate/individuals remained less than Rs.10 Lacs, hence they were eligible for threshold limit exemption in terms of Notification 33/2012-ST.

9.3 I find that in support of their claim that the Appellant provided services to Body corporate, they have furnished sales ledger, sample invoices of bricks carting, P&L A/c, Balance Sheet, ITR for F.Y.2014-15 & F.Y.2015-16.

10. I find that "*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 submissions made by the Appellant I find that the Appellant are providing service of Goods Transport Agency.



10.1 Further, I find that the recipient of service/payer of freight is liable to pay service tax in the light of Notification No. 30/2012-ST dated 20.06.2012. The extract of the of Notification 30/2012-ST dated 20.06.2012 is reproduced as under:

Government of India  
Ministry of Finance  
(Department of Revenue)  
Notification No. 30/2012-Service Tax

New Delhi, the 20 th June, 2012

GSR .....(E).-In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2012- Service Tax, dated the 17 th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 213(E), dated the 17 th March, 2012, and (ii) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2004-Service Tax, dated the 31 st December, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 849 (E), dated the 31 st December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely:-

I. The taxable services,-

(A) (i) .....

(ii) **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,-**

- (a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
- (b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India ;
- (c) any co-operative society established by or under any law;
- (d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;
- (e) **any body corporate established, by or under any law; or**
- (f) any partnership firm whether registered or not under any law including association of persons;

.....

(II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely:-

Sr. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
2.	in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road	NIL	100 %

Examining the above legal provisions with the facts of the case and submitted documents viz. sales ledger, sample invoices of bricks carting, P&L A/c, Balance Sheet, ITR for F.Y.2014-15 & F.Y.2015-16, I find that the appellants have provided GTA service to the body cooperates and non-body corporate which are evident from the sales ledger. After analyzing the Sales ledgers submitted by the appellant, I find that the recipients of the appellant are mainly Private Limited Co (body Corporate) namely (1)M/s Brixton Infrabase Pvt. Ltd., (2) M/s Meanwalk Infra Structure Pvt.



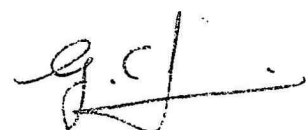
Ltd., (3) M/s Shkti Developers Pvt. Ltd. , (4) M/s Ankita Construction Pvt. Ltd. etc. In those cases wherein the recipient of the appellants are body corporate, the liability of tax payment will shift to the recipient only by virtue of the Notification 30/2012-ST dated 20.06.2012.

10.2 I also find that the appellant have provided service to non-body corporate which are evident from the sales register submitted by the appellant. The consideration received by the appellant after providing GTA services to non-body corporate recipients will be chargeable to service tax and in such case the appellant themselves would be held liable to pay service tax. However, after scrutiny of the sales register and submission on record, I find that the appellant have received income from non-body corporate which amounts to only Rs. 8,30,470/- which is not beyond the threshold exemption limit which is envisaged in the light of Notification No. 33/2012-ST dated 20.06.2012. Now, I find that the benefit of threshold exemption under the Notification No. 33/2012-ST dated 20.06.2012 is available to the appellant as they have received income only to the amount of Rs. 5,77,820/- in the preceding year to the impugned period i.e. 2014-15, which is also below the threshold limit to be taxable amount as per the above said Notification dated 20.06.2012. Hence, they are eligible to avail basic exemption limit in F.Y. 2015-16 and not liable to pay Service Tax on the service provided to non-body corporate/individuals during the F.Y. 2015-16.

11. In view of above discussions & findings, I am of the considered view that the demand of Service Tax confirmed vide the impugned order fails to sustain on merit. As the demand of service tax fails to sustain, question of interest and penalty does not arise.

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: 27<sup>th</sup> February, 2024





सत्यापित/Attested:

अमरेन्द्र कुमार

अधीक्षक (अपील्स)

सी जी एस टी, अहमदाबाद

By REGD/SPEED POST A/D

To,

M/s Bakulaben Amrutbhai Prajapati,  
23, Sarvodaya Nagar Society,  
Near Ujala Hotel, Sarkhej,  
Ahmedabad - 382210

Copy to :

1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST and Central Excise, *AHD SOUTH*
3. The Assistant Commissioner, CGST & CEX, *VIII* Division, *AHD SOUTH* Commissionerate.
4. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication of OIA on website.
5. Guard file.
6. PA File.



