



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:- 20240364SW0000999BB1

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STD/428/2023 / 3112 / 6 / 16
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-319/2023-24 and 19.03.2024
(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	20.03.2024
(ङ)	Arising out of Order-In-Original No. 149/AC/Javed Khan Pathan/DIV-II/A'bad South/JDM/2022-23 dated 01.02.2023 passed by The Assistant Commissioner, CGST, Division-II, Ahmedabad South	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	The Assistant Commissioner, Central GST, Division-I, Ahmedabad South. GST Bhavan, Ahmedabad.
(छ)	प्रतिवादी का नाम और पता / Name and Address of the Responded	M/s. Gulab Dhanji Jain, MS Pritesh Road Lines, 1431 Sindhi Com MKT, Kabutarkhana, Kalupur, Ahmedabad- 380002

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:-

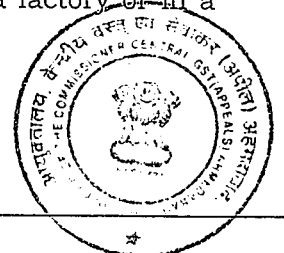
**Revision application to Government of India:**

(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 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.

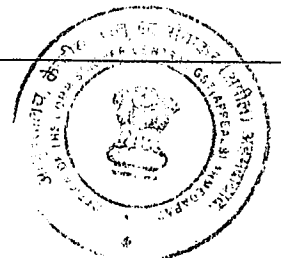
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 अपीलो 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।

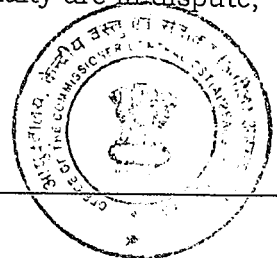
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

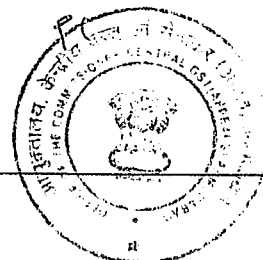


**ORDER-IN-APPEAL**

The following appeals have been filed under section 84(1) of the Finance Act, 1994 (hereinafter referred as 'the Act') by the Assistant Commissioner, CGST & C. Ex., Division-I, Ahmedabad South Commissionerate (hereinafter referred as 'appellant') in compliance to Order-in-Review Nos. 12/2023-24 dated 27.04.2023 passed by Commissioner, Central GST, Ahmedabad South (hereinafter referred to as. the "the reviewing authority" also) against Order-in-Original No. 114/WS03/AC/CSM/2022-23 dated 02.02.2023 (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 Gulab Dhanji Jain, MS Pritesh Road Lines, 1431 Sindhi Com MKT, Kabutarkhana, Kalupur, Ahmedabad- 380002 (hereinafter referred as "the Respondent").

Sr. No.	Appeal No. & Date	Review Order No. & Date	Order-In-Original No. & Date
01.	GAPPL/COM/STD/428/2023- APPEAL Dated 01.05.2023	12/2023-24 dated 27.04.2023	114/WS03/AC/CSM/2022-23 dated 02.02.2023

2. Briefly stated, the facts of the case are that the appellant are holding PAN No. AAUPJ0419Q. The Income Tax Department provided data indicating taxable income for the financial years 2014-15 to 2016-17. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Years 2014-15 to 2016-17, it was noticed that the appellant had earned an income of Rs. 4,47,80,667/- during the F.Y. 2014-15, and Rs. 3,85,39,599/- during the F.Y. 2015-16, which was reflected under the heads "Sales / Gross Receipts from Services (Value from ITR)" filed with the Income Tax department. Accordingly, it appeared that the appellant 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 appellant were called upon to submit required details of service provided during the F.Y. 2014-15 to



2016-17, however, they did not respond to the letters issued by the department. The appellant's failure to register for service tax, respond to correspondence, and properly assess service tax liability led to allegations of willful suppression of facts and evasion of payment. As a result, a demand for service tax payment of Rs. 33,36,939/- for the F.Y. 2014-15 to 2016-17, along with interest and penalties, was issued.

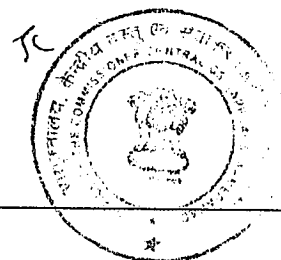
2.1 The respondent were issued Show Cause Notice No. V/15-557/Div.-I/Gulab Dhanji Jain/2020-21 dated .12.2020 during the period 2014-15 to 2016-17 wherein:

a) Demand and recover an amount of Rs. 33,36,939/- under the provision to Sub Section (1) of Section 73 of the Act along with interest under section 75 of the Act.

b) Imposed penalty under Section 77(1) of the Act for failure to take service tax registration as per the provision of Section 69 of the Act, and penalty under Section 78 of the Act for non-payment of service tax by wilfully suppressing the facts from the department with intent to evade the payment of service tax.

4. The 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. 12/2023-24 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:

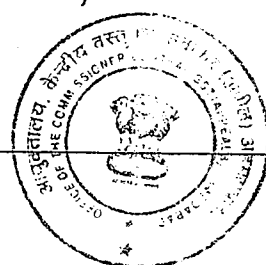
➤ During the review of the Order in Original, it is observed that the adjudicating authority while allowing the benefit of exemption under Notification No. 30/2012-ST dated 20.06.2012 erred in the interpretation of the Notification No. 30/2012-ST dated 20.06.2012.



- The Adjudicating authority has failed to discuss the constitution of the service recipient and did not mention that whether service recipient is any body corporate or any partnership firm.
- As per the aforementioned Notification, it can be inferred that the Service Tax liability would be discharged by the service recipient only if the recipient falls under (a) to (e) mentioned in the entry No. I(ii) of the said Notification.
- The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable service specified in (I) of the said notification shall be 100%.
- It is also found that an individual/proprietorship firm is not covered above 'specified category'. Therefore, if the freight is paid (either himself or through his agent) by an individual/proprietorship firm or HUF then the service tax thereon shall be paid by the GTA itself.
- From the plain reading of the above finding of the Adjudicating authority, it appears that the Adjudicating authority had erred in the OIO in interpreting the Notification No. 30/2012-ST dated 20.06.2012 as amended and therefore erred in dropping service tax demand of Rs. 33,36,939/-

5. The respondent were called upon to file a memorandum of cross objection against the appeals. Personal hearing in the case was held on 15-03-2024. Shri M.S. Chhajed, Chartered Accountant, appeared for personal hearing on behalf of the respondent. He reiterated the contents of the written submissions and requested to uphold the order.

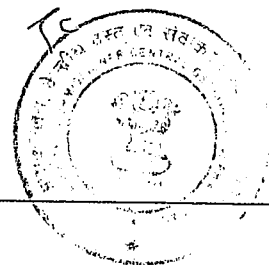
6. I find that the appellant challenge the impugned order, which allowed exemption benefits under Notification No. 30/2012-ST dated 20.06.2012 for services provided by the respondent. I also find the appellant argues that the liability to



pay service tax rests with the respondent as the service recipients are individual/proprietorship firm or HUF. They further contend that the adjudicating authority failed to discuss as to whether the service recipients are individual/proprietorship firm or HUF or the specified person as mentioned in the I(A) (ii) of the Notification No. 30/2012-ST dated 20.06.2012. Thus, the adjudicating authority failed to discuss the constitution of the service recipients. According to the appellant, if the service recipients are the persons specified in sr. no. (a) to (e) in entry no. I (A) (ii) of the Notification No. 30/2012-ST dated 20.06.2012, the liability of payment of service tax shifts to the service recipient under RCM. Since, individuals or proprietorship firms are not included in the specified categories, the appellant argue that if they pay the freight, the GTA itself i.e. the respondent are liable for the service tax.

7. The respondent have replied that the appellant did not scrutinize the records properly and merely construed that the services were provided to the individuals/proprietorship firms/HUFs. The respondent also claim that the appellant failed to consider the benefit of abatement Notification 24/2012-ST.

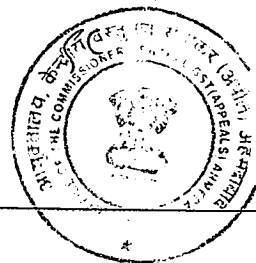
8. The respondent have claimed that they provided GTA services to various companies or factories, which are those business entities falling under the specified categories as mentioned in sr. no. (a) to (e) of the entry no. I(A) (ii) of the Notification No. 30/2012-ST dated 20.06.2012. Hence in this case, the recipients will be held liable to pay 100% of service tax under RCM as per the table mentioned in entry no. II of the above said notification. Further, they have also asserted that they provided services in a goods carriage of agricultural produce and also provided services to another GTA, which is exempt from service tax under the provision of sr. no. 21 and 22 of Notification No. 25/2012-ST dated 20.06.2012.



8.1. To substantiate the claim the respondent have submitted sales registers, Form 26AS, Income Tax Return, Audit Report pertaining to F.Y. 2014-15 and 2015-16.

9. After careful consideration of the submissions from both the appellant and the respondent, it is evident that the reviewing authority merely opines that the services were provided to the individuals/proprietorship firms/HUFs, however I observed from perusing the submission and documents on record that the respondent have provided services, which is exempted by virtue of sr. no. 21 and 22 of the Notification No. 25/2012-ST dated 20.06.2012. It is also observed that the respondent have provided services to the recipients who may fall under the specified categories of the Notification No. 30/2012-ST dated 20.06.2012. However, the respondent have not provided a clear bifurcation of services provided by the respondent under reverse charge mechanism (RCM); services provided to individual/proprietorship firms/HUF; services provided to another GTA; services related to carriage of agricultural produce.

9.1. Upon examination of the documents submitted by the respondent, it is not clarified as to which service recipients are covered under specified categories mentioned in sr. no. (a) to (e) of the Notification 30/2012-ST. Similarly, it cannot be ascertained from perusing the submissions of the appellant and respondent that which recipients are individual/proprietorship firms/HUF/another GTA recipients and which recipients are those whom the respondent provided service for carriage of agricultural produces. It is evident that there are substantial discrepancies in the interpretation of Exemption/Abatement/RCM Notification. Hence, I am of the opinion that the matter is required to be examined for through verification; hence the matter is required to be remanded back to adjudicating authority.

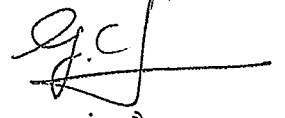




10. In view of the above discussion, the impugned order is set aside and the matter is remanded back for fresh adjudication.

11. 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.

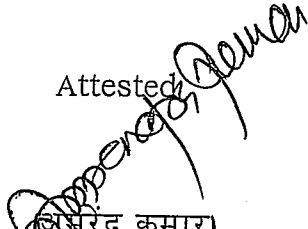


ज्ञानचंद जैन

आयुक्त (अपील्स)

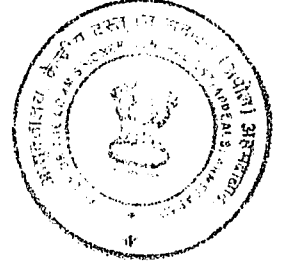
Date : 19.03.2024

Attested



अनंद 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 Gulab Dhanji Jain,  
MS Pritesh Road Lines,  
1431 Sindhi Com MKT,  
Kabutarkhana, Kalupur,  
Ahmedabad- 380002

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 Supdt. (Appeals), CGST, Ahmedabad South (for uploading the OIA)
5. Guard File
6. PA file

