



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 : 20230764SW0000838807

**स्पीड पोस्ट**

- क फाइल संख्या : File No : GAPPL/COM/STP/1380/2023 /333K - 28
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-64/2023-24  
दिनांक Date : 14-07-2023 जारी करने की तारीख Date of Issue 19.07.2023  
आयुक्त (अपील) द्वारा पारित  
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Ar.sing out of OIO No. 36/CGST/Ahmd-South/JC/MT/2022-23 दिनांक: 18.11.2022 passed by  
Joint Commissioner, CGST, HQ, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

**Appellant**

M/s NG Logistics Solutions Pvt Ltd  
1, Narnarayan Estate,  
Isanpur Narol Road,  
Nr. HP Petrol Pump, 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 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) केंद्रीय 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।

(i) 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 :

(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 प्रकिया 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 a 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.

(ब) 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 रूपये या उससे कम होतो रूपये 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004

(a) 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 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 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि-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 क 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.

62<sup>प</sup> 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)-

- a. (Section) खंड 11D के तहत निर्धारित राशि;
- इण लिया गलत सेनवैट क्रेडिट की राशि;
- बण 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.

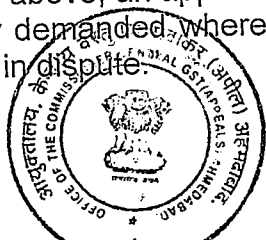
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (iii) amount determined under Section 11 D;
- (liii) amount of erroneous Cenvat Credit taken;
- (liv) 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

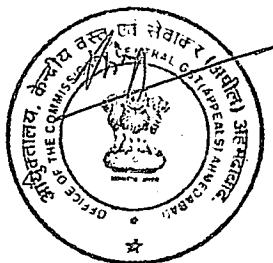
The present appeal has been filed by M/s. NG Logistics Solutions Pvt Ltd, 1, Nannarayan Estate, Isanpurrr Narol Road, Nr. HP Petrol Pump, Narol, Ahmedabad - 3824051 (hereinafter referred to as "the appellant") against Order-in-Original No. 36/CGST/Ahmd-South/JC/MT/22-23 dated 18.11.2022 (hereinafter referred to as "the impugned order") passed by the Joint Commissioner, Central GST, HQ, Ahmedabad South (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. AACCN6771GST001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2015-16 and FY 2016-17, it was noticed that there is difference of value of service amounting to Rs. 1,77,32,935/- for the FY 2015-16 and Rs. 2,06,76,342/- for the FY 2016-17, between the gross value of service provided in the said data and the gross value of service shown in Service Tax return filed by the appellant for the said period. The appellant were called upon to submit clarification for difference along with supporting documents, for the said period. However, the appellant had not responded to the letters issued by the department.

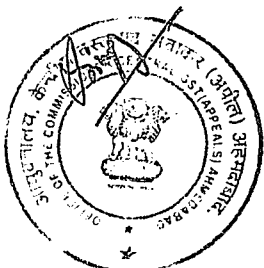
2.1 Subsequently, the appellant were issued Show Cause Notice No. STC/04-19/O&A/N.G./21-22 dated 21.04.2021 demanding Service Tax amounting to Rs. 56,72,726/- for the period FY 2015-16 and FY 2016-17, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; recovery of late fees under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994; and imposition of penalties under Section 77 and Section 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 55,68,820/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2015-16 and FY 2016-17. Further (i) Penalty of Rs. 55,68,820/- was imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 41,300/- was imposed on the appellant under Section 77 of the Finance Act, 1994; and (iii) Recovery of late fees of Rs. 80,000/- was from the appellant also ordered under Section 70 of the Finance Act, 1994.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the following grounds:



- The appellant are engaged in goods transportation services and were holding Service Tax Registration No.AACCN6771GST001 and filed ST-3 Returns from time to time.
- The appellant were providing services to two entities namely: (1) M/s. Haire Appliances India Pvt. Ltd., which is private limited company, being body corporate liable to pay Service Tax on GTA services on RCM basis; and (2) M/s. Neeta Enterprise A/c. M/s. Sharp Business Systems (I) Ltd., M/s. Neeta Enterprise is a GTA and they were providing services to M/s. Neeta Enterprise on behalf of M/s. Sharp Business Systems (I) Ltd., being private limited company and being body corporate, these service recipients are liable to pay service tax on such services under Reverse Charge Mechanism (RCM) under Notification No. 30/2012-ST.
- The appellant have provided goods transportation services to both company and they have discharged service tax liability in their respective returns and the appellant are not liable to pay service tax on GTA services, accordingly the appellant have filed their service tax return showing Nil liability and not paid any tax, as recipient is liable to pay on reverse charge basis.
- Moreover, recipient namely M/s. Haire Appliances India Pvt. Ltd. has also paid service tax on GTA services on reverse charge basis in their service tax returns, while M/s. Neeta Enterprise is a GTA, accordingly M/s. Sharp Business Systems (I) Ltd., is liable to pay service tax on RCM basis.
- The adjudicating authority has totally ignored submissions and clarifications given by the appellant in Reply to SCN. As mentioned at Para 6 of the impugned order, the appellant has produced Copy of agreement for transportation of service with M/s. Haier Appliances (I) Private Ltd. as well as copy of sample copies of consignment note with M/s. Haier Appliances (I) P Ltd., and Neeta Enterprises A/c of Sharp Business Systems (I) Ltd. At Para 8.9 of impugned order the adjudicating authority has agreed that in case of GTA service by road, 100% service tax payable by the person receiving service, but he disallowed their claim, saying that copy of Lowry Receipt/ Consignment Note submitted by them is not legible. Therefore their claim is rejected.
- The appellant submitted that they have provided copy of LR/ Consignment note for F.Y. 2015-16 and F.Y. 2016-17 but on sample basis, as they are not supposed to keep copy of LR with them for secrecy of business of Haier Appliances P Ltd., to prove



their case, they have provided details of service tax paid by recipient of service, then it is sufficient proof that they are not liable to pay tax on forward charge, and there cannot be double tax, for same service.

- The appellant submitted that they have provided services to Neeta Enterprise, who is GTA having service tax Registration No. AGOPS9982MST001 as they have provided service to another GTA and in turn they have provided services to Sharp Business Systems (I) Ltd., which is a body corporate who is liable to pay service tax on GTA service from Neeta Enterprise on RCM basis.
- At Para 9 of the impugned order the adjudicating authority has mention levy of Late Fee for non-filing of service Tax return for 2015-16 and 2016-17 and mention that they are liable to pay prescribed late fee, and in the order part he has order to recover late fee of Rs.80,000/- (Rs.20000/- for each ST- Return). In this regard, the appellant submitted that the adjudicating authority has not verified their status of returns filed by them, infact appellant has filed all service tax return for 2015-16 and 2016-17. They submitted copy of returns filed by them along with the appeal memorandum. So no question of any penalty for non-filing of returns arise.
- As per the provision of section 77, penalty under this section can be levied when there is contravention of rules and provisions of Act for which no penalty is specified elsewhere. In their case there is no contravention of any rules and provisions, and the adjudicating authority has not specified under which sub section of Section 77 they have made contravention of rules and provision of Act. Mere mentioning of section is not sufficient, as they need to specify what is contravention of rules and provision and under which sub-section they falls.
- As they have obtained registration, moreover they are not liable to pay any service tax being GTA, and they have filed all returns for the F.Y.2015-16 and 2016-17, they have also appeared and produced all necessary details in proceedings, so they do not covered by section 77 of Finance Act,1944. Levy of penalty is bad in law.
- It is an undisputed fact that they have provided GTA services and their services are subject to RCM and such services are subject to 70% abatement. As adjudicating authority himself has agreed and mentioned in the impugned order that they are providing GTA Services., it is crystal clear, beyond doubt and accepted fact that they have provided GTA Services. In their case as explained above, liability of payment of service tax is on RCM basis and the appellant are not liable to payment of service tax.



In absence of liability of tax, the question of levy of penalty, late fee and interest doesn't arise.

- The appellant further submitted that the impugned order is a non-speaking order. The adjudicating authority has confirmed the demand along with interest on full value of demand and equivalent penalty without appreciating the submissions of the appellant and without providing any reasons for not considering the said submissions. In this regard, they relied upon the following case laws:

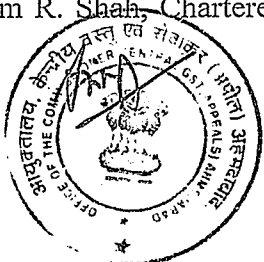
- a) Cyril Lasardo (Dead) v. Juliana Maria Lasarado - 2004 (7) SCC 431
- b) Asst. Commissioner, Commercial Tax Department v. Shukla & Brothers reported at 2010 (254) ELT 6 (SC)

- The appellant further submitted that the plain reading of the provision shows that Section 78 of the Finance Act, 1994 shall be fully applicable in cases where the tax was not paid for any reason of fraud, suppression or misrepresentation. Since there is no suppression on the part of the appellant, therefore, the demand confirmed under Section 78 is not maintainable and liable to be set aside on this ground alone.

4. Personal hearing in the case was held on 16.05.2023. Shri Priyam R. Shah, Chartered Accountant, appeared for personal hearing on behalf of the appellant. He re-iterated the submission made in appeal memorandum. He stated that he would submit a written submission fiving reconciliation statement and other documents.

4.1 The appellant have vide letter dated 22.05.2023, submitted additional written submission, wherein they inter alia submitted that they are Goods Transport Agency and the recipient of service is liable to pay service tax on reveres charge basis. They further submitted that one of the recipient is body corporate viz. M/s. Haier Appliances India P. Ltd. and has paid Service Tax on GTA services provided by the appellant on RCM basis. They submitted the ST-3 Returns filed by service recipient i.e. M/s. Haier Appliances India P. Ltd., as documentary evidence. They further submitted that in another case where they have rendered services to another GTA viz. M/s. Neeta Enterprises, which were exempted as per Sr. No. 22(b) of the Notification No. 25/2012-ST dated 20.06.2012. They have also submitted a certificate dated 17.05.2023 issued by M/s. Sharp Business Systems (I) Pvt. Ltd. certifying that they have availed GTA services from M/s. Neeta Enterprises and they have liable to pay service tax on RCM basis and have paid the applicable service tax.

4.2 Due to change in authority Personal hearing in the case was again held on 03.07.2023. Shri Priyam R. Shah, Chartered Accountant, appeared for personal hearing on behalf of the



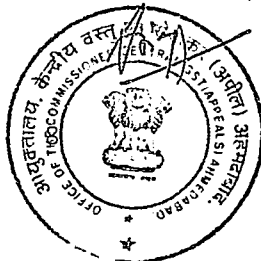
appellant. He re-iterated the submission made in appeal memorandum and in the additional written submissions dated 23.05.2023 and those made at them time of earlier personal hearing. He submitted that the appellant has provided GTA services only two customers, both of which have paid the service tax applicable on RCM basis. The lower authority had rejected their claim for exemption merely because of non-availability of legible copy of lorry receipt. The have since provided legible copies of the same with the appeal. The lower authority has also imposed penalty for not filing of returns. However, the appellant had filed the returns a copy of which is enclosed with the appeal. Therefore, he requested to set aside the impugned order.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum; in additional written submission; during the course of personal hearing and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of service tax against the appellant along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise. The demand pertains to the period FY 2015-16 and FY 2016-17.

6. It is observed that the main contention of the appellant in the appeal memorandum are that they are Goods Transport Agency and during the material time they have provided services only to the two recipient (1) M/s. Haier Appliances India Pvt. Ltd. and M/s. Neeta Enterprise. The first is a body corporate and the service tax liability on the RCM basis on the service recipient and the second is a GTA and thus the service provided by the appellant is exempted from service tax as per Sr. No. 22(b) of the Notification No. 25/2012-ST dated 20.06.2012.

7. It is also observed that the adjudicating authority has confirmed the demand of Service tax observing that the appellant not submit complete list of LR / Consignment Note for F.Y. 2015-16 and F.Y. 2016-17 and even the sample submitted is not completely legible. The relevant para of the impugned order is as under:

*"8.10 As per provisions contained in Rule 2(d)(B)(V) of the Service Tax Rules, 1994 read with Notification No. 30/2012-ST dated 20.06.2012 as amended, Service Tax on GTA service provided to a body corporate established, by or under any law; partnership firm whether registered or not under any law including association of persons; a factory registered under or governed by the Factories Act, 1948 (63 of 1948) and dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made there under is payable in RCM by the service recipient. The service provider has contended that they are providing service to only*



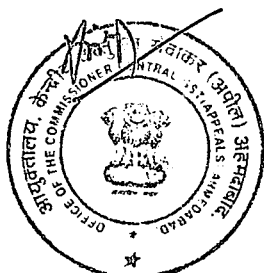


two body corporates. They contended that they are providing GTA service to Haier Appliances India Pvt. Ltd. and Neeta Enterprise A/C Sharp Business Systems (I) Ltd. They have produced agreement between M/s. N G Logistics Solutions Pvt. Ltd and M/s Haier Appliances India Pvt. Ltd. but there is nowhere mentioned that the M/s. Haier Appliances India Pvt. Ltd. will pay service tax on GTA service. They failed to produce agreement between them and M/s. Neeta Enterprise A/C Sharp Business Systems (I) Ltd. Further, it is also pertinent to note that no undertaking/agreement have been submitted by the service provider in respect of nature of service rendered or mention of Reverse Charge Mechanism. Hence in absence of any such undertaking or any proof that shows that the service recipient i.e. body corporate or partnership firms are discharging service tax under RCM for the services provided by the service provider.

8.11 From the above, I have noted that the assessee has claimed that they were providing GTA service to two body corporate which is exempted from payment of service tax exemption under Notification No. 30/2012-ST which deals with a payment of service tax at the end of service receiver on reverse charge mechanism. In this regard, vide letter dated 27.04.2021 the service provider has submitted the details of freight register for the period under dispute showing the details of consigner, consignee, PAN No., L.R. No. and Freight Receipt.

8.12 However, they failed to submit complete list of LR / Consignment Note for F.Y. 2015-16 and F.Y. 2016-17 to this office. Even the sample submitted is not completely legible hence no inference can be drawn as to whether service was provided or not. Therefore LR / Consignment Note could not be examined for FY 2015-16 and FY 2016-17. Hence, I deny the exemption for the entire amount of said service provided by the Service Provider to their recipients. Thus, as per the details produced by service provider, the value of such service for the year 2015-16 and 2016-17 comes to Rs. 1,77,32,935/-, and Rs. 2,06,76,342/- respectively. I hold that entire amount of Rs. 3,84,09,278/- is liable for payment of service tax without any benefit of either abatement of exemption to the service provider.”

8. I find that in the SCN in question, the demand has been raised for the period FY 2015-16 and FY 2016-17 based on the Income Tax Returns filed by the appellant. Except for the value of “Sales of Services under Sales / Gross Receipts from Services” provided by the Income Tax Department, no other cogent reason or justification is forthcoming from the SCN for raising the demand against the appellant. It is also not specified as to under which category of service the non-levy of service tax is alleged against the appellant. Merely because the appellant had reported receipts from services, the same cannot form the basis for arriving at



the conclusion that the respondent was liable to pay service tax, which was not paid by them. In this regard, I find that CBIC had, vide Instruction dated 26.10.2021, directed that:

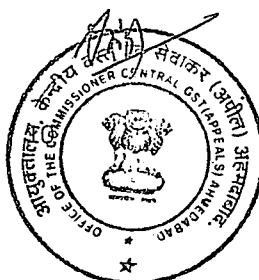
*"It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.*

*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."*

8.1 In the present case, I find that letters were issued to the appellant seeking details and documents, which were allegedly not submitted by them. However, without any further inquiry or investigation, the SCN has been issued only on the basis of details received from the Income Tax department, without even specifying the category of service in respect of which service tax is sought to be levied and collected. This, in my considered view, is not a valid ground for raising of demand of service tax, specifically in present case, when the appellant is already registered under the category of GTA with the Service Tax department and filed all the ST-3 Returns for the said period.

9. For ease of reference, I reproduce the relevant provision for reverse charge mechanism as provided under Notification No. 30/2012-ST dated 20.06.2012 and relevant provision of Notification No. 25/2012-ST dated 20.06.2012, which reads as under:

*"Notification 30/2012 Service Tax dated 20.6.2012 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 17th 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 17th 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 31st 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 31st 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;”

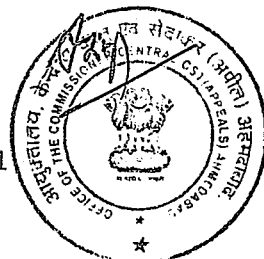
“Notification No. 25/2012-Service Tax dated 20th June, 2012

G.S.R. 467(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification No. 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

1...

2... ..

22. Services by way of giving on hire —



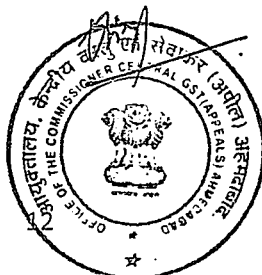
- (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or  
 (b) to a goods transport agency, a means of transportation of goods;"

10. Based on the legal provision above, I find that as per the provisions of Notification No. 30/2012-ST dated 20.06.2012, if the service recipient falls under any of the specified 06 categories of service recipients as prescribed under Notification No. 30/2012-ST dated 20th June 2012, then the service recipients were liable to pay the Service Tax under Reverse Charge Mechanism. However, I find that the adjudicating authority has not considered the service provided by the appellant falls under RCM merely on the ground that the appellant not produced the legible LR. I also find that the adjudicating authority has not considered the status of the service recipient mentioned in the income ledger provided by the appellant; the details of freight register for the period under dispute showing the details of consigner, consignee, PAN No., L.R. No. and Freight Receipt provided by the appellant as mentioned by the adjudicating authority in Para 8.11 of the impugned order; the facts that the appellant were GTA and registered with Service Tax department under the category of GTA and the service recipient M/s. Haier Appliances India Pvt. Ltd. is Body Corporate and said service recipient falls under the specified categories of service recipients as mentioned in Notification No. 30/2012-ST. Thus, I find that the impugned order passed by the adjudicating authority is not correct and legal.

11. As regard the service provided by the appellant to M/s. Neeta Enterprise, I find that as per the provisions of Sr. No. 22(b) of the Notification No. 25/2012-ST dated 20.06.2012, service provided by the appellant to M/s. Neeta Enterprise was exempted from the service tax.

12. I also find that the adjudicating authority has confirmed the demand of service tax, without considering the legal provisions and verification of the documents. If the documents were not submitted by the appellant, the adjudicating authority was required to call for the further documents from the appellant, which was not done by the adjudicating authority. As mentioned in para supra, the CBIC had, vide Instruction dated 26.10.2021, specifically directed that the adjudicating authorities are expected to pass a judicious order after proper appreciation of facts. However, the adjudicating authority failed to do so in the present case.

13. In view of the above discussion, I find that the appellant is not required to pay any service tax on the service provided by them to M/s. Haier Appliances India Pvt. Ltd. as the service recipient is liable to pay service tax on the same on RCM basis as well as the appellant is also not required to pay any service tax on the service provided by them to M/s. Neeta Enterprise, as the same is exempted as per Sr. No. 22(b) of the Notification No. 25/2012-ST dated 20.06.2012.

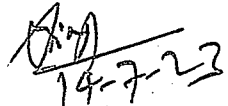


14. In view of above, I hold that the impugned order passed by the adjudicating authority, confirming demand of Service Tax from the appellant for the FY 2015-16 and FY 2016-17, is not legal and proper and deserves to be set aside. Since the demand of Service Tax fails, there does not arise any question of charging interest or imposing penalties in the case.


15. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

16. 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.

  
(Shiv Pratap Singh)  
Commissioner (Appeals)

Attested

  
(R. C. Maniyar)  
Superintendent(Appeals),  
CGST, Ahmedabad

Date : 14-7-23.



Appellant

**By RPAD / SPEED POST**

To,  
M/s. NG Logistics Solutions Pvt Ltd,  
1, Narnarayan Estate,  
Isanpurrr Narol Road,  
Nr. HP Petrol Pump, Narol,  
Ahmedabad - 3824051

The Joint Commissioner,  
CGST, HQ,  
Ahmedabad South

Respondent

Copy to :

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

- ~~5) Guard File~~
- 6) PA file

