



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 : 20230764SW0000999A71

**स्पीड पोस्ट**

- क फाइल संख्या : File No : GAPPL/COM/STP/1266/2023 / 11023 - 28
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-71/2023-24  
दिनांक Date : 24-07-2023 जारी करने की तारीख Date of Issue 31.07.2023  
आयुक्त (अपील) द्वारा पारित  
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of OIO No. 35/CGST/Ahmd-South/JC/MT/22-23 दिनांक: 18.11.2022 passed by Joint Commissioner, CGST, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

**Appellant**

M/s Eastern Tractor  
Plot No. 107, Transportnagar,  
Aslali, Ahmedabad - 382427

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) 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।

(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 प्रक्रिया 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.

(ख) 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 रुपये या उससे कम होतो रुपये 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 अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रु.6.50 पैसे कान्यायालय 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.

71P 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.

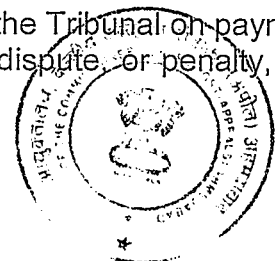
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (lxxix) amount determined under Section 11 D;
- (lxxx) amount of erroneous Cenvat Credit taken;
- (lxxxi) 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**

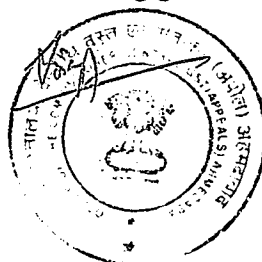
The present appeal has been filed by M/s. Eastern Trailor, Plot No. 107, Transportnagar, Aslali, Ahmedabad – 382427 (hereinafter referred to as “the appellant”) against Order-in-Original No. 35/CGST/Ahmd-South/JC/MT/22-23 dated 18.11.2022 (hereinafter referred to as “the impugned order”) passed by the Joint Commissioner, Central GST, 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. AGJPG2004KST001. 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. 3,33,53,844/- for the FY 2015-16 and Rs. 3,79,88,874/- 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 returns filed by the appellant for the FY 2015-16 and FY 2016-17. The appellant were called upon to submit clarification for difference along with supporting documents, for the said period vide letter dated 27.01.2020, 28.09.2020 and summons dated 01.04.2021. However, the appellant had not responded to the letters and summons issued by the department.

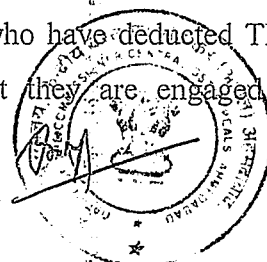
2.1 Subsequently, the appellant were issued Show Cause Notice No. STC/04-11/O&A/Eastern/21-22 dated 21.04.2021 demanding Service Tax amounting to Rs. 1,05,02,013/- for the period FY 2015-16 and FY 2016-17, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed 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, ex-parte, vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 1,03,41,434/- 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. 1,03,41,434/- was also imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 41,200/- was imposed on the appellant under Section 77 of the Finance Act, 1994; and (iii) Penalty of Rs. 80,000/- was imposed on the appellant under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994 for late filing of service tax returns.

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 is engaged in provisions of Transport of goods by road/Goods Transport Agency service to the GTA service provider. They are not providing service to Consignor or to Consignee for transportation of goods and this being the case they are not issuing Consignment Note. Further they provide Trailers to GTA service providers and charging freight for the same by issuing Loading Slip. The said service is exempted vide Sr. No. 22 of Notification No. 25/2012-ST. Mainly their customers are GTA Service providers who actually transport the goods on behalf of Consignor or Consignee.
  
- Sufficient proof regarding Nature of Business was provided to the adjudicating authority. The appellant is having turnover exceeding Rs. 1 crore in the financial year, hence, they are subjected to Statutory audit under Income Tax Act. Accordingly, the appellant are supposed to submit Annual Audited Report for the financial years in Form No.3CD prescribed under the Income Tax Act, 1961 duly signed by Chartered Accountant. The said 3CD report contains following vital information about the appellant. It contains the details of Nature of Business carried out by the appellant, details of books of accounts maintained by them on the basis of which the concerned Chartered accountant has audited their records while submitting Form 3CD to the Income Tax department. The appellant is furnishing Balance Sheet and Profit & Loss Account.
  - (i) As per 3CD statement the appellant is engaged in Transport & Logistics Services, Freight Transport by Road;
  - (ii) The appellant is maintaining Cash Book, Bank Book, Booking Register, Freight Register, Journal Register, Ledger (Computerized).
  - (iii) The Balance Sheet, contains the details of Fixed assets which includes various immovable property, movable properties viz. Trailers. These properties are being given on rental basis to their customers.
  - (iv) Profit & Loss Account contains details of Income on account of Freight and Renting of Immovable properties. These Incomes are related to services provided by the appellant.
  - (v) The Form 26AS contains the details of TDS under Section 194C and 194I(B) of the Income Tax Act, 1961 by the customers of the appellant. TDS deducted under Section 194C is in relation to Freight service provided by way of renting of Trailers where as TDS deducted under Section 194I(B) is in relation to renting of immovable properties. The names of the customers who have deducted TDS under Section 194C amply make it clear that they are engaged in the GTA services.



Therefore, authenticity of the contention of the appellant that they are providing Trailers on rental basis could be established.

- The appellant vide their letter dated 07.10.2022 also submitted following documents for the period from 2015-16 to 2017-18 ( Up to June2017) before the adjudicating authority.

(i) Balance Sheet and Profit & loss A/c;

(ii) Income Tax Return;

(iii) Form 26 AS;

(iv) Freight Register.

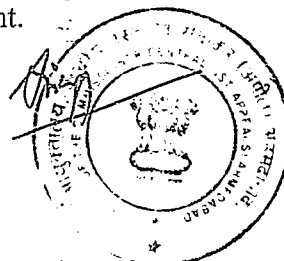
- However, the adjudicating authority had neither appreciated nor considered the said records with regard to nature of services provided by the appellant and not recorded any findings in this regard as to why the said documents were not found relevant for deciding the nature of service. It was explicitly reflected in the Freight Register and Profit and Loss Account that Income is related undisputedly on account of 'Freight'.

- The appellant have submitted that there are various business models in the transportation of goods business. Some of the business models are described as under.

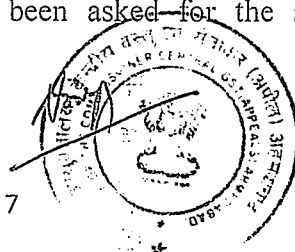
(i) The person owns vehicle and transport goods from consignor to consignee. In this case Consignment notes would be issued by the Transporter.

(ii) The person does not owns vehicles or is having less vehicles, however his transportation business demands more vehicle, in transporter of goods would hire/ charter vehicle. This model called Renting model. The customer does not buy a product, but instead rents it. This lowers the capital typically needed to gain access to the product. The company itself benefits from higher profits on each product, as it is paid for the duration of the rental period. Both parties benefit from higher efficiency in product utilization as time of non-usage, which unnecessarily binds capital, is reduced on each product.

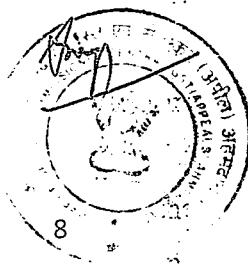
(iii) Commission Agent. Sometimes a person transport the goods on commission basis. In this case the person do not owns vehicle, however transport goods from consignor to consignee by diverting business to other person in return of certain markup called commission. In this case consignment note would be issued by the person to whom business is diverted by the commission agent.



- The appellant giving their trailers on hire basis to the person who actually transport goods from consignor to consignee i.e. second model. The rent collected by chartering vehicle is recognized in the books as Freight Receipt by the appellant in their books of account. Further it was also submitted by the appellant before the adjudicating authority that they are giving their trailers to Transporter of the goods and charging for such chartering from the person who actually loading the goods from the consignor for consignee. This being the their case the appellant submitted that such an activities is specifically covered in Sr. No. 22 of Notification No. 25/2012-ST and accordingly they are not required to pay service tax.
- Instead of appreciating the facts of the case in light of documents submitted and submission of the appellant the adjudicating authority, while adjudicating the show cause notice, it is recorded in the impugned order that the appellant failed to provide supporting invoice i.e. consignment note/lorry receipt (Sales Invoices) for the service provided by them. The appellant also failed to provide any agreement made with the transporters of goods, they also failed to provide party wise ledger for the services provided by them.
- Accordingly, mentioning such pity ground it was finally held by the adjudicating authority that in the absence of such evidences, benefit evidences, benefits of exemption Notification No. 25/2012-ST dated 20.06.2012 cannot be extended to them.
- In this regard the appellant submitted that had the adjudicating authority would asked for the deficient documents before the adjudication, the appellant would clarified the matter with regard to documents and would have submit other documents. By not giving such an opportunity, the adjudicating authority has issued impugned order in gross violation of Principal of Natural Justice.
- The appellant is primarily engaged in supply of Trailers on rental basis and not engaged in Transportation of Goods. The appellant is recording their Income inrelation to Freight by 'Loading Slips' [Specimen copies of Loading Slips are attached] whereas Income related to Renting of Immovable property is recorded on the basis of agreements with the tenants [one such agreement is attached].
- In this regard the appellant would like to submit that;
  - (i) At no point of time before adjudication the adjudicating authority have asked for such documents, Had it been asked for the same would have been submitted by the appellant.

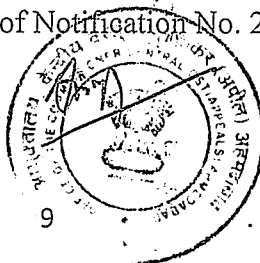


- (ii) Further, it is submitted that the appellant is not involved in the provision of GTA services and hence they are not issuing Consignment note.
- (iii) As submitted earlier, the appellant is not engaged in provision of GTA Service there could not be any agreement in relation to Transportation of Goods; nor they are having any agreement for giving their vehicle on rent as its freight is purely market driven.
- The appellant has submitted Ledger of Freight Received. Which contains the date wise details with name of the customers to whom trailers was given on rent and Rent amount is referred to as Freight Received. The appellant was under bona-fide belief that Income ledger titled as "Freight Received" also referred to as Freight Register, which is the documents on the basis of which Income reflected in the Profit and loss account is recorded. This register was produced before the adjudicating authority.
  - Party wise ledger would contain the debit by an amount shown in their Loading Slip and credit side would contain the payment received whether in advance or in part or in full. As the appellant is recording their Income of Freight is on the basis of Loading Slip in Freight Receipt Ledger, party wise ledger to ascertain income is not of much relevance.
  - Nevertheless, the appellant would like to submit that had adjudicating authority would have asked for party wise ledger before the adjudication, the appellant would have given the same. Specimen copies of party wise ledger is enclosed. As the appellant is maintaining such ledger, there could not be any intention for non submission of the same.
  - The names of the customers of the appellant mentioned in the Loading Slips are the Renowned Goods Transport Agencies. They are the person who would issue Consignment Note and would collect freight from their customers and their customers are liable to discharge service tax under RCM for the freight amount shown in the Consignment notes issued by the customers of the appellant who actually transport the goods in the trailers supplied by the Appellant on Rental basis.
  - Therefore the appellant contend that they are not engaged in transportation of goods but engaged in supply of Trailers on rental basis to GTA service provider. This being the case the appellant claimed that the trailers hire charges recognised by the appellant in their books as Freight is exempted vide Sr. No. 22 of Notification No. 25/2012-ST.

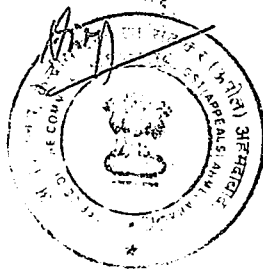




- The adjudicating authority has concluded that in the agreement there is no mention about who would discharge service tax on GTA service is irrelevant and not applicable to the appellant. In this regard, the appellant submitted that they have not produced any agreement to the department as they are not entering in to agreement with any of their customers. Leaving aside, in the case of GTA service provider, the service tax has to be discharged by the person who bears the Freight. In the instant case the appellant have earned Freight, where is the question to demand service tax from the appellant. Thus, conclusion and question raised by the adjudicating authority is only on presumption and assumption and without any basis and question raised for the sake of raising question and just to deprive the benefit which are statutorily available to the appellant. This shows how casual is adjudicating authority is.
- It is strange that the appellant is not entering into any agreement, instead providing vehicle to the person who is in need for specific trip for transportation of goods. This being the case the appellant has not produced any agreement to the department, than how the adjudicating authority is referring the agreement. This facts shows the extent of casualness in the adjudication of the show cause notice.
- Further, service by way of giving on hire to a goods transport agency a means of transportation of goods is exempted vide Sr. No. 22 of Notification No. 25/2012-ST,
- Not only that Clause (p) of Section 66D provides that; services by way of transportation of goods (i) by road except the services of-(A) a goods transportation agency; or (B) a courier agency. Thus Transport of goods took place in many ways, however transporters are not liable to service tax under Section 68(1) of the Finance Act, 1994 read with notification issued there under.
- The appellant relied on the Ruling of Authority of Advance Ruling, Karnataka, in the case of Saravana Perumal reported at 2020 (33) GSTL 39 (AARGST-Kar) wherein identical issue decided. There is no departure between Sr.No. 22 of Notification No. 25/2012-ST and Entry No. 22 of Notification 12/2012-Central Tax (Rate). From the above two entry it could be seen that both the entries are identical and ditto. Thus these services were exempted from payment of Service tax prior to introduction of GST and also exempted from payment of GST after Introduction of GST. Though the above ruling is pertains to GST Regime, however in the pith and substance the facts of the matter of the present case and that of Ruling of AAR, Karnataka are same. Hence the appellant submit that the said Ruling is clearly supports the exemption claimed by the appellant in terms of Sr. No. 22 of Notification No. 25/2012-ST.



- It is on record that impugned show cause notice was issued by the department only on the basis of details of ITR of the appellant received from CBDT, however, strangely, the adjudicating authority is not considering the documents relied upon by them and clarification with regard to nature of business declared by the appellant in 3CB/CD report and books of account maintained by the appellant as declared in 3CB/CD. In fact the department has assumed on the basis of details of ITR that the service provided by the appellant is taxable service and accordingly subject show cause notice was issued without any investigation. When the appellant gives explanation with regard to exemption available to them under Sr. No. 22 of Notification No. 25/2012-ST, however instead of considering the same, the adjudicating authority rejected the claim of the appellant on the ground that the appellant failed to produce Consignment Note, Lorry receipt, Party wise ledger.
- The appellant submit that they are not engaged in provisions of GTA service instead they are engaged in providing Trailers on rental basis. Such rent income is exempted vide Sr. No. 22 of Notification No. 25/2012-ST. However, the claim of the appellant is not accepted on the ground of non production of Consignment Note/Lorry receipt assume for a moment that the appellant is engaged in Transportation of goods as GTA. Then, also it is submitted that the appellant [the service provider] is not liable to discharge service tax under Section 68(1) of the Finance Act, 1994 instead service tax in the case of GTA service is liable to service tax in the hands of service recipient under Section 68(2) of the Finance Act, 1994 read with Service Tax Rules, 1994 and Notification No. 30/2012-ST.
- Further, it is also the submission of the appellant that as they are engaged in the provision of supply of trailers on rental basis, they are not having consignment note/Lorry receipt. However, if the view of adjudicating authority is accepted that the appellant is engaged in transportation of goods without issuance of Consignment notes, then the appellant would like to contend that in such a situation, the appellant is not liable to discharge service tax as the transportation of goods without issuance of Consignment notes is covered in the Negative list clause (p) of Section 66D of the Finance Act, 1994.
- Thus, the appellant is not providing transportation of goods as they are not Goods Transport Agency. Further Section 65(50b) of the Finance Act, 1994 define the terms Goods Transport Agency.



- Thus, as submitted above the appellant is not engaged in providing service as GTA, they are not GTA service provider as they are not issuing Consignment note, their service is covered in the Negative list clause (p) of Section 66D as mentioned above.
- The appellant would like draw attention to CBEC circular No. 186/5/2015-ST dated 05.10.2015 wherein it is categorically clarified who are the GTA service provider.
- In response to show cause notice the appellant vide their letter dated 07.10.2022 submitted various documents. If any deficient document is found by the adjudicating authority, the same would have been asked before the adjudication of the show cause notice. Therefore the appellant contend that it is not their case that documents were asked for by the department and not produced by the appellant.
- As submitted by the appellant in the aforesaid grounds of appeal, their service is not liable to service tax being exempted vide Sr. No. 22 of Notification No. 25/2012-ST, no interest is payable by them under Section 75 of the Finance Act, 1994.
- As regard to imposition of penalty of Rs. 41,200/- under Section 77 of the Finance Act, it is submitted that it is imposed upon M/s. Ravthi Jayraj who is not related in any way with the appellant. The name of Ravthi Jayraj is erroneously mentioned. However, it is also submitted by the appellant that they have not committed any offence which attract penalty under Section 77 of the Finance Act, 1994.
- As regard to penalty under Section 78 imposed, the appellant contend that as submitted in the aforesaid grounds of appeal, they are not liable to pay any service tax as demanded form them, no penalty is imposable upon them.
- In view of their above submissions, the appellant submitted that their service is covered under Sr. No. 22 of Notification No. 25/2012-ST, no service tax on the consideration received and reported in their Income tax return is payable by them, hence under that bonafide belief they have not reported the said Income in their ST-3 returns filed by them. Therefore, there was no intent to evade any payment of service tax, no penalty under Section 78 is imposable upon them. In view of above impugned order confirming demand of service tax under proviso to Section 73 alongwith Interest under section 75 is not sustainable and so is for penalty under Section 77 and Section 78 of the Finance Act, 1994.

4. Personal hearing in the case was held on 03.07.2023. Shri Vijay N. Thakkar, Authorised Representative, appeared on behalf of the appellant for personal hearing. He

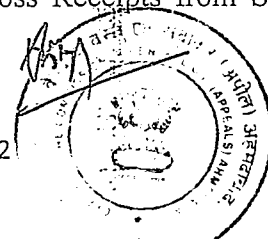
reiterated the submission made in the appeal. He submitted that the appellant is a transporter. The lower authority has denied the exemption stating that the appellant had not submitted party wise ledger and sale invoices. He submitted that as mentioned in Para 6.1 of the impugned order the appellant had submitted freight register which contains details of all the invoices issued to various customers. That also submitted Form 26AS, ITR and Audit Report. Now the appellant has also submitted party wise ledger and sample invoices (Loading memo). He submitted that the appellant was providing vehicles for transport to various GTA on hire basis. Therefore, their claim for exemption under Sr. No. 22 of the Notification No. 25/2012-ST is valid. In view of the above, 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, 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 contentions of the appellant in the appeal memorandum is that they have provide Trailers to GTA service providers and charging hire charges for the same by issuing Loading Slip, which was accounted by them as Freight receipt. The said service is exempted vide Sr. No. 22 of Notification No. 25/2012-ST. Their customers are GTA Service providers who actually transport the goods on behalf of Consignor or Consignee. They have provided sufficient proof regarding Nature of Business to the adjudicating authority. However, the adjudicating authority had neither appreciated nor considered the said records with regard to nature of services provided by the appellant and not recorded any findings in this regard as to why the said documents were not found relevant for deciding the nature of service.

7. It is also observed that the adjudicating authority has passed the impugned order confirming the demand of service tax stating that the appellant failed to provide supporting invoice i.e. consignment note/lorry receipt (Sales Invoices) for the service provided by them. The adjudicating authority also observed that the appellant also failed to provide any agreement made with the transporters of goods, they also failed to provide party wise ledger for the services provided by them. Therefore, in the absence of such evidences, benefits of exemption Notification No. 25/2012-ST dated 20.06.2012 cannot be extended to them.

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



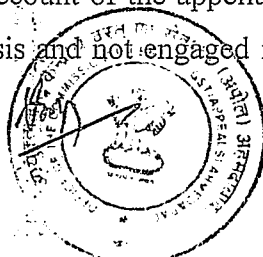
Income Tax Department, no other cogent reason or justification is forthcoming from the SCN for raising the demand against the appellant. It is also not specified as to under which category of service the non-levy of service tax is alleged against the appellant. Merely because the appellant had reported 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 when the appellant registered with the service tax department and filed their ST-3 Returns. I also find that the adjudicating authority confirmed the demand of service tax observing that the appellant have not provided sufficient proof regarding Nature of Business. However, as per para 3 of the aforesaid circular it is duty of the adjudicating authorities to pass a judicious order after proper appreciation of facts and submission of the noticee. I also find that there is no evidence in the impugned order that the adjudicating authority asked for any deficient documents before the adjudication, and the appellant not provided the same. By not giving such an opportunity, the adjudicating authority has issued impugned order in hurry, which is a gross violation of Principal of Natural Justice.

9. I find that the demand of service tax confirmed in the impugned order in respect of income of Rs. 3,33,53,844/- for the FY 2015-16 and Rs. 3,79,88,874/- for the FY 2016-17, which is shown as Freight Income in the Audited Account of the appellant. The appellant is primarily engaged in supply of Trailers on rental basis and not engaged in Transportation of



Goods. The appellant is recording their Income in relation to Freight by 'Loading Slips' to their Freight Receipt Register. I also find that the appellant also provided Freight Receipt Register on the basis of the demand of the service tax has been re-calculated by the adjudicating authority.

9.1 On verification of the sample Loading Slip submitted by the appellant; submission of the appellant; Freight Receipt Register for the FY 2015-16 and FY 2016-17; Certificate of CA dated 15.11.2022 submitted by the appellant, I am of the considered view that the appellant engaged in the service of giving hiring of their vehicle viz. Tractor and Trucks to another GTA for transportation of goods purpose and received hire charges, which was accounted for by the appellant as Freight Receipt in their Audited Accounts. Section 65B(44) of the Finance Act, 1994, as inserted w.e.f. 1 July, 2012, defines 'service' to mean any activity carried out by any person for another for consideration and includes a declared service but would not include certain services specified in clauses (a), (b) and (c). Declared services have been enumerated in Section 66E of the Finance Act, 1994. Sub-clause (f) of Section 66E of the Finance Act, 1994, which is relevant for the purposes of the activity involved in this case, is as follows:

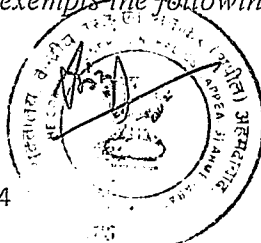
*"(f) transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods;"*

9.2 Thus, the service rendered by the appellant were falls under the definition of the service as per Section 65B(44) of the Finance Act, 1994. I also find that the appellant not issued any consignment notes, hence not falls under the definition of GTA.

10. For ease of reference, I reproduce the relevant provision of Notification No. 25/2012-ST dated 20.06.2012; definition of GTA as provided under Section 65B(26) of the Finance Act, 1994 and relevant provision of Negative List as contained in Section 66D(p) of the Finance Act, 1994, which reads as under:

*"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;”*

**Section 65B(26) of the Finance Act, 1994**

*“(26) “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;”*

**“SECTION 66D. Negative list of services.—**

*The negative list shall comprise of the following services, namely :-*

*(p) services by way of transportation of goods—*

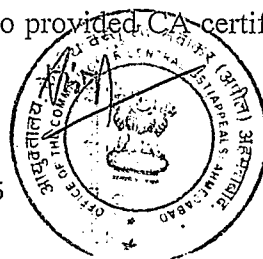
*(i) by road except the services of—*

*(A) a goods transportation agency; or*

*(B) a courier agency;”*

10.1 Based on the legal provision above, I find that the appellant were giving their Trailers and Trucks to another GTA service providers and charging hire charges/ freight for the same by issuing Loading Slip is not taxable and exempted one as per the provisions of Sr. No. 22(b) Notification No. 25/2012-ST dated 20.06.2012. I also find that the CA Gaurav P. Jain & Associates vide their Certificate, already produced before the adjudicating authority by the appellant, certified that out of total Freight Income of Rs. 3,33,53,844/- for the FY 2015-16, the income of Rs. 3,31,28,844/- generated through Service supplied to GTA and remaining income of Rs. 2,25,000/- related to Service supply to other. They also certified that total Freight Income of Rs. 3,79,88,874/- for the FY 2016-17 generated through Service supplied to GTA. I also find that the appellant paid Service tax on income of Rs. 2,25,000/- and also filed ST-3 Return for the same.

11. I find that at one side the adjudicating authority has in Para 6.1 of the impugned order mentioned that the appellant informed that they were engaged in providing service of their vehicle i.e. Truck, Tractor to other transporter on rent basis for the purpose of transportation of goods and also mentioned that the appellant also provided CA certificate dated 15.11.2022 in



respect of service provided by them. Whereas on the other side the adjudicating authority has in Para 8.6 of the impugned order held that the appellant failed to provide supporting invoices i.e. consignment notes / lorry receipts for the service provided by them.

11.1 Thus, I 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.

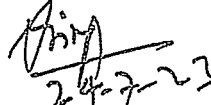
12. In view of the above discussion, I find that the appellant is not required to pay any service tax on the service provided by them to various GTA, as the same is exempted as per Sr. No. 22(b) of the Notification No. 25/2012-ST dated 20.06.2012.

13. 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.

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


15. 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.

  
24.7.23  
(Shiv Pratap Singh)  
Commissioner (Appeals)

Date : 24.7.23

Attested

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

**By RPAD / SPEED POST**

To,  
M/s.Eastern Traylor,  
Plot No. 107, Transportnagar,



Appellant



Aslali, Ahmedabad – 382427

The Joint Commissioner,  
CGST,  
Ahmedabad South

Respondent

Copy to :

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

- 5) Guard File
- 6) PA file



