



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: 20230864SW000041944A

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1848/2023 / 1839 - H3

ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-75/2023-24
दिनांक Date : 31-07-2023 जारी करने की तारीख Date of Issue 10.08.2023

आयुक्त (अपील) द्वारा पारित
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)

ग Arising out of OIO No. 114/WSO8/AC/KSZ/2022-23 दिनांक: 13.12.2022 passed by Assistant
Commissioner, CGST, Division-VIII, Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s Dhruv Taneja (HUF),
805, Synergy Tower, Corporate Road,
Prahlad Nagar, Ahmedabad, Gujarat.

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 :

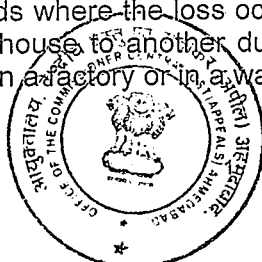
Revision application to Government of India:

(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, 4th Floor, Jeevan Deep Building, Parliament Street, New
Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first
proviso to sub-section (1) of Section-35 ibid :

(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.
- (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 इका 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।

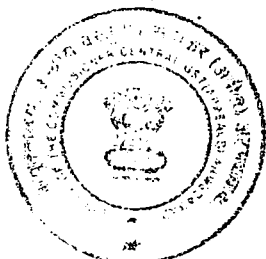
The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004
- (a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd 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 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.

17 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:

- (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.

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 of duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



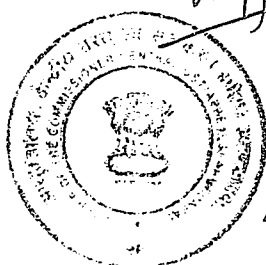
ORDER-IN-APPEAL

The present appeal has been filed by M/s. Dhruv Taneja (HUF), 805, Synergy Tower, Corporate Road, Prahladnagar, Ahmedabad (hereinafter referred to as "the appellant") against Order-in-Original No.114/WS08/AC/KSZ/2022-23 dated 13.12.2022 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division VIII, Ahmedabad South (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant are holding PAN No. AAIHD3878F. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2014-15, it was noticed that the appellant had earned an income of Rs. 17,18,524/- during the FY 2014-15, 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 relevant documents for assessment for the said period. However, the appellant had not responded to the letters issued by the department.

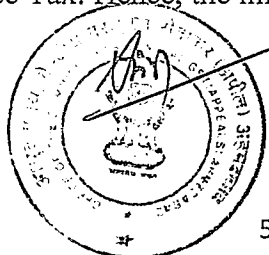
2.1 Subsequently, the appellant were issued Show Cause Notice No. CGST/Div-VIII/O&A/TPD/148/AAIHD3878F/2020-21 dated 21.09.2020 demanding Service Tax amounting to Rs. 2,12,409/- for the period FY 2014-15, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 77(1), Section 77(2) 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. 2,12,409/- 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 2014-15. Further (i) Penalty of Rs. 2,12,409/- was imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1) of the Finance Act, 1994 for failure to obtain the Service Tax Registration; and (iii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994 for failure to assess service tax due on the service tax provided by the appellant and furnish a return in the format of ST-3 return within the specified time.



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

- The appellants are engaged in providing Goods Transport Agency Services and used to collect the charges for the services provided by them in the name of freight charges either from the consignor or from the consignee during the FY 2014-15. They have issued Consignment Note for the transportation services provided by them.
- As per Rule 2(1)(d)(v) of the Service Tax Rules, 1994 a person liable to pay service tax in relation to service provided by a Goods Transport Agency is any person specified in the said rule, who is liable to pay freight for transportation of goods by road.
- By analysing the aforesaid rule, it can be determined that the person liable to pay service tax is any person paying freight if the service provided to any specified person mentioned in the said rule. The liability to pay service tax is covered under reverse charge mechanism and therefore, the Goods Transport Agency is not liable to discharge service tax liability.
- The appellants have submitted sample copies of Consignment note, copy of Profit & Loss Account and Balance Sheet for the FY 2014-15 and copy of Income Tax Return for the FY 2014-15 along with appeal memorandum.
- In the present case as the appellants are exclusively providers of Goods Transport Agency Service and therefore, they are not liable to pay service tax as per the Notification No. 30/2012-ST dated 20.06.2012 and service recipients are liable to pay service tax on reverse charge mechanism. In support of their above arguments, the appellants relied upon the following case laws:
 - a) MSPL Ltd. Vs. Commissioner of Central Excise, Belgaum – 2009 (23) STT 107 (Bang. – CESTAT)
 - b) M/s. Srivalli Shipping and Transport Pvt. Ltd. Vs. Commissioner of Central Excise, Visakhapatnam – 2018 (3) TMI 1281 – CESTAT Hyderabad
 - c) Essar Logistics Ltd. Vs. Commissioner of Central Excise, Surat – 2014 (33) STR 588 (Tri. – Ahmd.)
- As the entire demand itself is unsustainable, as there was no contravention to the provision of Service Tax. Hence, the imposition of penalty and interest also can not be sustained.



- Without prejudice to the aforesaid, the penalty under Section 78 of the Finance Act, 1994 can not be imposed as there was no suppression of facts or willful misstatement or contravention of any of the provisions on part of the appellant with regards to non payment of service tax.

4. Personal hearing in the case was held on 31.07.2023. Shri Arjun Akruwala, Chartered Accountant, appeared on behalf of the appellant for personal hearing and reiterated submissions made in appeal memorandum. He submitted that the appellant is providing GTA services and issuing consignment notes. The entire tax liability was on the recipient of service on RCM basis. Sample consignment notes and ITR with computation is enclosed. Therefore, he requested to set aside the impugned order.

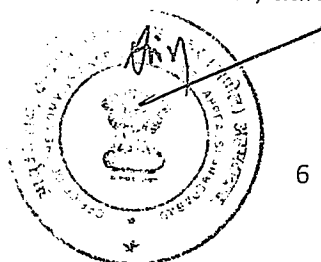
5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of service tax 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 2014-15.

6. It is observed that the main contention of the appellant are that (i) they have engaged in providing GTA service and the liability of paying service tax on the recipient of service on RCM basis as per Notification No. 30/2012-ST as all the recipient are Body corporate.

6.1 It is also observed that the adjudicating authority has confirmed the demand of service tax vide impugned order passed ex-parte.

7. For ease of reference, I reproduce relevant provision for reverse charge mechanism as provided under Notification No. 30/2012-ST dated 20.06.2012 as amended, 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:-

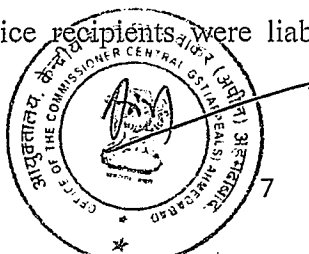
I. The taxable services,—

- (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;”*

Table

<i>Sl. No.</i>	<i>Description of a service</i>	<i>Percentage of service tax payable by the person providing service</i>	<i>Percentage of service tax payable by any person liable for paying service Tax other than the service provider</i>
2.	<i>in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road</i>	NIL	100%

7.1 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. In the present case, on verification of Income Ledger for the FY 2014-15 and Consignment, Notes issued by the appellant, I find that the appellant provided GTA services to the below mentioned entity during the FY 2014-15 and all the entity falls under the specified 06 categories of service recipients as prescribed under Notification No. 30/2012-ST dated 20.06.2012. Therefore, I find that in all the case the service recipients were liable to pay the Service Tax under Reverse Charge Mechanism and not the appellant.

- (i) Satl India Private Limited
- (ii) Hasti Petrochemical & Shipping Ltd.
- (iii) Keavy Global Logistic Private Limited
- (iv) Koriya Marine Transport Pvt. Ltd.
- (v) Jayden Shipping & Logistics Pvt. Ltd.

8. In view of above, I hold that the impugned order passed by the adjudicating authority, confirming demand of Service Tax from the appellant on the income received by them during the FY 2014-15, 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.

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

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

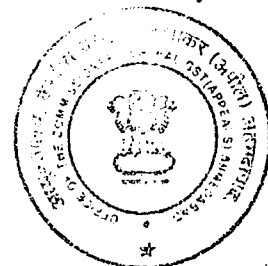
The appeal filed by the appellant stands disposed of in above terms.

(Shiv Pratap Singh)
Commissioner (Appeals)

Date : 31-7-23

Attested

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



By RPAD / SPEED POST

To,
M/s. Dhruv Taneja (HUF),
805, Synergy Tower,
Corporate Road, Prahladnagar,
Ahmedabad

Appellant

The Assistant Commissioner,
CGST, Division-VIII,
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 VIII, Ahmedabad South
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad South
(for uploading the OIA)

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



