



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: 20230864SW0000018091

**स्पीड पोस्ट**

- क फाइल संख्या : File No : GAPPL/COM/STP/3001/2023 / 509x-98
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-82/2023-24  
दिनांक. Date : 31-07-2023 जारी करने की तारीख Date of Issue 28.08.2023  
आयुक्त (अपील) द्वारा पारित  
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of OIO No. 68/CGST/Ahmd-South/JC/MT/2022-23 दिनांक: 30.12.2022 passed by  
Joint Commissioner, CGST, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

**Appellant**

M/s. Sirjuddin Rustam Gehlot,  
Shop No.1, Survey No.857,  
Saubhagya Hotel, Near Gurudwara,  
Aslali Sarkhej Ring Road, 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 :

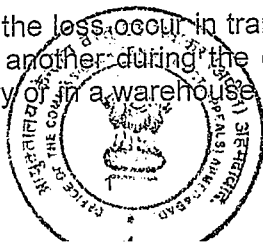
**Revision application to Government of India:**

(i) 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।

(ii) 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.
- (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 हों।

- (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 भीतर मूल-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।

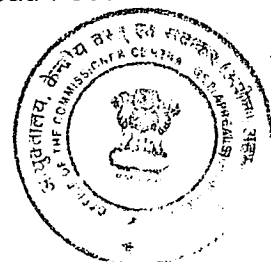
The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

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 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 शुल्क अधिनियम 1970 यथासंशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश 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.

1प 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 or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



**ORDER IN APPEAL**

M/s. Sirajuddin Rustam Gehlot, Shop No, 1, Survey No. 857, Saubhagya Hotel, Near Gurudwara, Aslali Sarkhej Ring Road, Aslali, Ahmedabad-382427 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. 68/CGST/Ahmd-South/JC/MT/2022-23 dated 30.12.2022 (in short '*impugned order*') passed by the Joint Commissioner, Central GST, Ahmedabad South Commissionerate (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in providing taxable services and were not registered with the department. They were holding PAN No. ARLPG0427D.

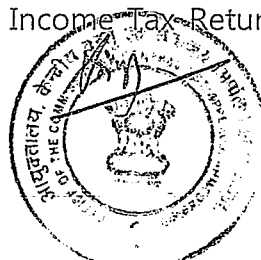
2. The facts of the case, in brief, are that based on the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16, it was noticed that the appellant had declared income of Rs.7,76,38,573/- under the heads "Sales / Gross Receipts from Services (Value from.ITR)", on which no service tax was paid. Letters were, therefore, issued to the appellant to provide the details of the services provided during the F.Y. 2015-16 and to explain the reasons for non-payment of tax and provide the certified documentary evidences for the same. The appellant neither provided the documents nor submitted any reply justifying the non-payment of service tax on such receipts. Therefore, the service tax was calculated on the income reflected under the heads "Sales / Gross Receipts from Services (Value from ITR)" considering the same as taxable value.

2.1 A Show Cause Notices (SCN) bearing No. STC/4-07/O&A/Sirajudin/21-22 dated 22.4.2021 was issued to the appellant proposing recovery of service tax amount of Rs.1,12,57,593/- along with interest; under Section 73(1) and Section 75 of the Finance Act, 1994. The late fee under Section 70; imposition of penalties under Section 77(1) and Section 78 of the Finance Act, 1994 were also proposed.

3. The said SCN was adjudicated vide the impugned order wherein the service tax demand of Rs.1,12,57,593/- was confirmed alongwith interest. Late fee of Rs.40,000/- was imposed under Section 70. Penalty of Rs. 10,000/-under Section 77(1) and penalty of Rs. 1,12,57,593/- under Section 78 of the Finance Act was also imposed.

4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, on the grounds elaborated below:-

- SCN have been issued without taking into consideration the following possibilities that the service provided may fall under negative list or services are exempt as per mega exemption Notification no. 25/2012; or may fall under reverse charge mechanism and liable to be paid by the service receiver or basic exemption 10 lacs is available to small service provider. They placed reliance on following decision:-
  - a) Sharma Fabricators & Erectors Private Ltd- (2019)
  - b) B. Oudh Sugar Mills Ltd Vs. UOI (1978)
- Demand cannot be raised solely on the basis of figures appearing in the Income Tax Return/ Form 26AS as information of provision of service was well within the knowledge of the Revenue Authorities, as Income Tax Return/ Form 26AS forms



part of the Government records and therefore, alleging wilful suppression of facts by appellant cannot be sustained. They placed reliance on following:-

- a) CBIC Instruction dated 26.10.2021.
  - b) R. Ramdas- 2021 (44) GSTL 258 (Mad)
  - c) Circular No, 1053/02/2017-CX dated 10.03.2017
  - d) Tamil Nadu Housing Board- 1995 Supp (1) SCC 50 1994.
- The burden is on the revenue to prove any of the above elements to uphold validity of an extended period of 5 years. That detailed verification must be made prior to issuing SCN and complete details be provided to the person in the SCN.
- As per Para no. 5 of Circular No. 1053/02/2017-CX, dated 10-03-2017, Board has made pre show cause notice consultation by the Principal Commissioner/ Commissioner prior to issue of show cause notice in cases involving demands of duty above Rs. 50 lakhs (except for preventive/ offence related SCN's) mandatory. Hence SCN issued is in defiance of the mandate given by the board and is not maintainable in law. The same view is taken in the case of Amadeus India Pvt Ltd vs Pr. Commr of CE, ST & CT-[2019 (25) GSTL 486 (Del.)] where in it was held that SCN issued with demand for earlier period without mandatory pre-show cause notice consultation is not sustainable being contrary to CBEC Circular as departmental circulars are binding on departmental officers.
- Services provided by the appellant falls under negative list as per Section 66D of the Finance Act, 1994. In clause (p) of the negative list as per Section 66D of the Finance Act, 1994:

*"Services by way of transportation of goods by road except the services of-*  
*(A) a goods transportation agency; or*  
*(B) a courier agency; " are not liable for Service Tax.*

Further Goods Transport Agency (GTA) means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called. It is routine practice in the said industry where the transporters take the service of other transporters in the form of sub-contract of work in case of non-availability of transport vehicle. Where the sub-contractor provides services of transportation of goods by road to main contractor without issuing any consignment note and bills to the main contractor, the main contractor provides the same services of transportation of goods by road to the entity whose goods are transported and issues consignment note as well and bills to the service receiver.

- In the present case the appellant is the sub-contractor who is providing services of transportation of goods to main contractor without issuing any consignment note, hence falls under clause (p) of Section 66D of the Finance Act, 1994 and further the main transporter who issues the consignment note (considered as GTA), bills to the entity whose goods are actually transported. Accordingly, the services of appellant



are squarely covered under clause (p) of Section 66D of the Finance Act, 1994 hence not liable for Service tax at all.

- Hence, Show Cause Notice issued by Joint Commissioner vide SCN F. No. STC/4-07/0&A/Sirajudin/ 21-22 is void ab initio and is liable to be set aside.

5. Personal hearing in the matter was held on 27.06.2023. Shri Sachin Dharwal, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum. He submitted that the appellant provided transport services without issuing any consignment notes. Therefore, his services are under negative list. The lower authority has confirmed the demand due to non-submission of documents relating to the service rendered. He undertook to submit a copy of ITR, Form-26AS, profit and loss account, ledgers, financial statements, invoices etc within in a week. Therefore, he requested to set-aside the impugned order.

6. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made by the appellant in the appeal memorandum as well as those made during personal hearing. The issue to be decided in the present case is as to whether the service tax demand of Rs. 1,12,57,593/- alongwith interest and penalties, confirmed in the impugned order passed by the adjudicating authority, in the facts and circumstances of the case, is legal and proper or otherwise.

The demand pertains to the period F.Y. 2015-16.

6.1 It is observed that the entire demand in the SCN has been raised based on the income data shared by the CBDT, on which no service tax was paid by the appellant. The appellant is not registered with the department. It is alleged that the appellant have not discharged the tax liability under GTA service. The appellant however claim that he is a proprietor of M/s. New Delhi Gujarat Tractor Service and a sub-contractor who provides transport services to main contractor without issuing any consignment note. The main transporter being a Goods Transport Agency (GTA) issues the consignment note, bills to the entity whose goods are actually transported. Therefore, they claim that their services are squarely covered under clause (p) of Section 66D of the Finance Act, 1994, on which no service tax is levied. The adjudicating authority however held that the appellant have not produced the agreement made with GTA, party-wise ledgers for the services provided by them.

6.2 It is observed that in terms of Section 66D specifying the Negative List of Services, the services provided by way of transportation of goods by road except the services provided by the GTA or Courier or by inland waterway are covered under clause (p) of negative list, hence not taxable.

*(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;*

*[(ii)*

\*

\*

\*

;] or



(iii) by inland waterways;

6.3 Further, clause (26) of Section 65B defines "(26) defined Goods Transport Agency as;

*"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;"*

6.4 On combined reading of above, it can be concluded that the services of GTA who in relation to transport of goods by road issues consignment notes by whatever name called is excluded from the negative list. The appellant claim they are not issuing consignment note hence are outside the taxable net. In support of their contention they submitted sample invoices, P&L Account, Balance Sheet & Form 3CD for the disputed period.

6.5 In the P&L account for the F.Y. 2015-16, they have shown freight income of Rs. 7,76,38,573/- and Truck income of Rs.1,80,000/-. I have gone through the sample invoices. In one such sample invoice, it is noticed that the appellant has raised a payment slip No.2601 dated 27.7.2015, wherein freight of Rs.1,00,000/- is charged from M/s. Shree Shyam Carrier from Ahmedabad to Bahrapur. Copy of sample invoice raised is produced below:-

New Delhi Gujarat Tractor Service			
Shop No 5, First Floor, Tirupati compound, Lambha Turning, Aslali Road, Lambha, Ahmedabad-382405.			
Sr.No. <u>2601</u>	Dated: <u>28/7/15</u>		
Tractor No. <u>10121/2014</u>	Loading Date: <u>27/7/15</u>		
From: <u>AHM</u>	To: <u>Bahrapur</u>		
Party Name: <u>Shree Shyam Carrier</u>			
Address: _____			
Owner Name: _____			
Address: <u>Ahmedabad</u>			
Pan Card No. : _____ Driver Name: _____			
Wt. _____ Rate _____ Freight _____			
	Ad.	Freight	100000
Advance Cash →	20000-817	RTO Fain	
Advance Bank 104	10000-817	OTHER	
Khoraki		EXTRA WEIGHT	
To Pay		HOLDING	
Commission	1000-		
Extra Payment	5100-		
Other Charges	600-		
Total	21700-	TOTAL	
1. No. Unloading On Sunday Any Other Holiday			TOTAL FREIGHT
			TOTAL ADVANCE
			TOTAL BALANCE

PAN NO. AAFLPG0427D

For. New Delhi Gujarat Tractor Service





# Tractor Service

Shop No. 05, First Floor, Tirupati Compound, Lambha Turning,  
Aslali Road, Lambha, Ahmedabad-382 405.  
Ph. : 079-25715812, M. : 08000935812, 09687935812

No. **2601**

**PAYMENT SLIP**

Dated **27/7/15**

To, Shree Shyam Carrier

Tractor No. Rank-6524

CH. No. 488 Date 27/7/15

From Ahmedabad To Bahampore

Weight \_\_\_\_\_ Rate per M.T. \_\_\_\_\_ Amount \_\_\_\_\_

Total Freight Rs. 102000

Adv. Rs. 82000

Balance Rs. 20000

Topay \_\_\_\_\_

R.T.O. Challan \_\_\_\_\_

Extra Weight \_\_\_\_\_

Detailion / Extra \_\_\_\_\_

TOTAL 20000

For, New Delhi Gujarat Tractor Service

Paid on Dt. \_\_\_\_\_

Cheque No. \_\_\_\_\_

Cash \_\_\_\_\_

Receiver's Sign. \_\_\_\_\_

L.S. No. \_\_\_\_\_

PAN No. ARLPG0427D

ICICI BANK A/c. 624405501286 HDFC BANK A/c. 25792000000645

6.6 Thereafter, M/s. Shree Shyam Carrier, Transporter & Fleet Owners, Surat (holding Service Tax Registration No. AYZPS8135MSD001 for GTA service) transported the goods weighing 10020 Kg (valued at Rs.37,52,325/-) to Consignee Bahrapur Chini Mills Ltd.. In the consignment note dated 18.06.2015, issued by M/s. Shree Shyam Carrier, the freight amount is mentioned as "to be billed" and the service tax is to borne by the consignor. A sample copy of the consignment note issued by M/s. Shree Shyam Carrier is produced below:-





**Shree Shyam Carrier**  
TRANSPORTERS & FLEET OWNERS

Head Office: Plot No. 1, Near Ambika Chhronkala,  
Opp. Dhakamali Hotel,  
Palsona Road, Sachin, SURAT-394200.

402

DATE: 18/06/15

TRUCK NO.: RJ-0148-5792

FROM: Sachin

TO: Balaangir, UP

**AT OWNER'S RISK INSURANCE**  
The consignor is advised that the goods are insured at the risk of the consignor.

Delivered at: Balaangir, UP

Consignor's Name M/s: DPT Chemical Process Engineering Pvt Ltd.

Address: Building No. 5, Merchant Industrial Estate, 1, Conchi Road, near L.I. Nagar, P. Dalguda

Consignee's Name M/s: G. K. Choudhary & Co. Pvt. Ltd.

Address: P.O. Balaangir, Dist. Balaangir, Uttar Pradesh - 201 120

Particulars	Weight	Rate Per Kg.	Freight to Pay	Freight Paid
2, Kuchela - 2, Kuchela - 2	12410			
5A	1043			
Details as per packing list				
INVOICE NO. 004/15-16				
DATE 18/06/15				
Gross Weight				
Total				
Secular Tax (2.5% Gross)				
Grand Total				
Advance				
Total Balance				

SERVICE TAX TO BE BORNE BY		
CONSIGNOR	CONSIGNEE	G.T. NO.

Service Tax No. AY2012-13ASD001

Not responsible for leakage breakage

For, Shree Shyam Carrier

DRIVER COPY

6.7 From, the above it is clear that M/s. Shree Shyam Carrier is the Goods Transport Agency who issues the consignment note, whereas the appellant is collecting the charges for renting out the vehicles. Similar practice is followed in all other cases where freight is collected by GTA and appellant collects the charges for giving the vehicle on hire. Thus, in terms of the clause (26) of Section 65B, I find that the appellant is not GTA as they are not issuing consignment note hence shall remain outside the purview of service tax as are covered under negative list defined under clause (p) of Section 66D.

6.8 Further, I find that the services of the appellant are also exempted vide Notification No. 25/2012-ST dated 20.06.2012, wherein vide Entry no. 22, the services of giving vehicles on hire to GTA is exempted. Relevant entry is re-produced below:-

**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;

6.9 Thus, in view of the above, I find that the service tax demand of Rs.1,12,57,593/- confirmed alongwith interest and penalties vide the impugned order is not sustainable on merits, as the services rendered by the appellant are squarely covered under negative list and under exemption Notification No.25/2012-ST.

7. In light of above discussion, I set aside the impugned order and allow the appeal filed by the appellant.



8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
The appeal filed by the appellant stands disposed off in above terms.

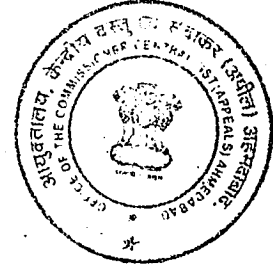
*Shiv Pratap Singh*  
31-7-23  
(शिव प्रताप सिंह)  
आयुक्त (अपीलेंस)

Date: 31-7-23

Attested

*Rekha A. Nair*

(Rekha A. Nair)  
Superintendent (Appeals)  
CGST, Ahmedabad



**By RPAD/SPEED POST**

To,  
M/s. Sirajuddin Rustam Gehlot,  
Shop No, 1, Survey No. 857,  
Saubhagya Hotel, Near Gurudwara,  
Aslali Sarkhej Ring Road, Aslali,  
Ahmedabad-382427

**Appellant**

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 (H.Q. System), CGST, Ahmedabad South.  
(For uploading the OIA)
- ✓ 4. Guard File.