



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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आजादी का
अमृत महोत्सव

By SPEED POST

DIN:- 20240464SW000011161C

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/4559/2023 / 4633 - 37
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-001-APP-03/2024-25 and 19.04.2024
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	24.04.2024
(ङ)	Arising out of Order-In-Original No. MP/11/DC/Div-IV/2023-24 dated 26.05.2023 passed by The Deputy Commissioner, CGST, Division-IV, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Amjadkhan Abdulgani Patha, (New Address) Prop. of - Bharat Logistic 17, Shyam Icon, Nr. S.P. 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 अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो सकता है।

Any person aggrieved by this Order-in-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way.

भारत सरकार का पुनरीक्षण आवेदन:-

Revision application to Government of India:

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 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 :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।



In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं 2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

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

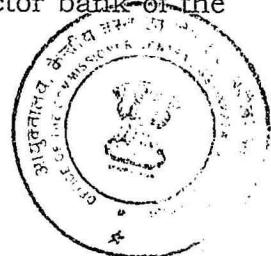
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(2) उक्तलिखित परिच्छेद में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

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 above para.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.



(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन और संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपील के मामले में कर्तव्यमांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में 'अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994).

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

(6) (i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो 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. Amjadkhan Abdulgani Pathan, Prop. Bharat Logistic, 13, Baba Balaknath Estate, On Lekhraj Estate, Narol Char Rasta, Narol, Ahmedabad – 382405 against Order-in-Original No. MP/11/DC/Div-IV/2023-24 dated 26.05.2023 (hereinafter referred to as “the impugned order”) passed by the Deputy Commissioner, Central GST, Division IV, 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. BBLPP1599J. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2014-15 and 2016-17, it was noticed that the appellant had earned an income of Rs. 21,32,484/- during the FY 2014-15 and Rs. 57,43,445/- during the FY 2016-17, which was reflected under the heads “Sales / Gross Receipts from Services (Value from ITR)” filed with the Income Tax department. The Service Tax liability is calculated as detailed below:-

Year	Taxable Value As per Income Tax data Sales/ Gross Receipts From Service (in Rs.)	Rate of Abate ment	Value of Abateme nt (in Rs.)	Net Taxable value (in Rs.)	Total Rate of Duty	Amount of ST along with Cess not paid/shor t paid (in Rs.)
2014-15	2132484	75%	1599636	533212	12.36%	65905
2015-16	Value not available					
2016-17	5743445	75%	4020412	1723033	15%	258455
					Total	3,24,360



2.1 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.

2.2 Subsequently, the appellant were issued Show Cause Notice and demanding Service Tax amounting to Rs. 3,24,360/- for the period FY 2014-15 and 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; and imposition of penalties under Section 77(1), Section 77(2) and Section 78 of the Finance Act, 1994.

2.3 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. 3,24,360/- 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. 3,24,360/- 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; and (iii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994.

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

- ❖ The appellant is not registered under Service Tax and is engaged provisions of Transport of goods by road/Goods



Transport Agency service to the GTA service provider. They are providing service to Private limited Company's for transportation of goods. They issue consignment note for every goods transported for the company or the bills are raised. The said service is exempted vide Sr.No.22 Notification No.25/2012-ST & RCM Notification No.30/2012-ST. Mainly their customers are Private Ltd. Co.

- ❖ The appellant is engaged in Transport & Logistics Services, Freight Transport by Road.
- ❖ The appellant has filed Income tax return as per section 44AD under Income tax act, The appellant is maintaining Cash Book, Bank Book, Booking Register, Freight Register, Journal Register, Ledger (Computerized). The Balance sheet, contains the details of Fixed assets which includes various immovable property, movable properties viz. Furniture, Motorcycle. Profit and loss accounts contains details of Income on account of Freight. These Incomes are related to services provided by the appellant.
- ❖ The Form 26AS contains the details of TDS under Section 194C) 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 Trucks. 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 Trucks on rental basis could be established.
- ❖ Appellant hires trucks from open market at market price and supply to their customer as demanded.



❖ The appellant giving their Trucks and trailer rented from open market on hire basis to the person who actually transport goods from consignor to consignee i.e. second model and to GTA service provider. The rent collected by chartering vehicle is recognized in the books as Freight Receipt by the appellant in their books of account. 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 No.30/2012-ST accordingly they are not required to pay service tax.

4. Personal hearing in the case was held on 21.03.2024. Shri Basant Sharma, Consultant, appeared on behalf of the appellant. He stated that the client is GTA. He supplies to GST and corporate clients which are exempt under Notification No. 25/2012 and 30/2012(RCM). He reiterated the contents of the written submission. He requested for one day time to submit additional documents.

4.1 The appellant has submitted sales (freight) register which contains detail of invoices pertaining to F.Y. 2014-15 & 2016-17, and sample copies of Consignment Note vide their forwarded letter dated 22.03.2024.

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 F.Y. 2014-15 and 2016-17.



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, and (ii) they also have engaged in providing service of hiring of Truck to GTA service providers and the freight so collected is exempted vide Sr. No. 22 of Notification No.25/2012-ST.

7. I find that the appellant are engaged in a Goods Transport Agency (GTA) service. The appellant contended that they provided the said service to various service recipients who are private limited companies, partnership firms and other GTA transporters. They claim that the service recipients viz. private limited companies and partnership firms are liable to pay service tax under RCM in the light of Notification No. 30/2012-ST dated 20.06.2012. They further claim that they are exempted to pay service tax in terms of sr. no. 22 of the Notification No. 25/2012-ST dated 20.06.2012 as in those cases they provided services to another GTA service providers.

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

Notification 30/2012 Service Tax dated 20.06.2012

*****the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely:-

I. The taxable services,—

(A) (i)



(ii) provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—

- (a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
- (b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;
- (c) any co-operative society established by or under any law;
- (d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;
- (e) any body corporate established, by or under any law; or
- (f) any partnership firm whether registered or not under any law including association of persons;”

Notification 25/2012 Service Tax dated 20.06.2012

*****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.....

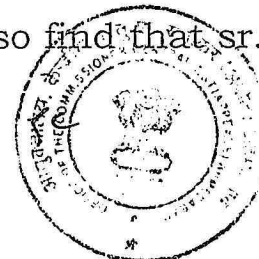
....

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;

8.1 On reading the above provisions, I find that 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 are liable to pay the Service Tax under Reverse Charge Mechanism. I also find that sr.



No. 22 of the Notification No. 25/2012-ST dated 20.06.2012 implies that if the GTA service are provided to a service recipients who are other GTA service provider, there will be no liability to pay service tax.

8.2. I have perused Form 26AS Certificate for the impugned period, it is noted that only a few TDS deductors were identified, namely Transport Corporation of India Limited, Hipolin Ltd., Sri Raghavendra Foods and T.M. Sudhakra Satishkumar HUF Goel. However, upon careful examination of the service recipients listed in sales registers provided by the appellant, it is observed that various service recipients are not found in form 26AS certificate provided by the appellant. Additionally, it cannot be ascertained from perusing the submission of the appellant that which recipients are individual/proprietorship firm/HUF/private limited company/ another GTA recipients. Hence, I am of the opinion that the matter is required to be examined for through verification; hence the matter is required to be remanded back to adjudicating authority.

9. In view of the above discussion and findings the order is set aside and the appeal is allowed by way of remand.

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.

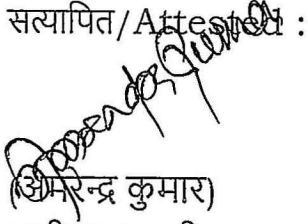
ज्ञानचंद जैन

आयुक्त (अपील्स)

Dated: 19th April, 2024



सत्यापित/Attested :



(अमरेन्द्र कुमार)

अधीक्षक (अपील्स)

सी जी एस टी, अहमदाबाद

By REGD/SPEED POST A/D

To,

M/s. Amjadkhan Abdulgani Pathan,

Prop. Bharat Logistic,

13, Baba Balaknath Estate, On Lekhraj Estate,

NarolCahr Rasta, Narol, Ahmedabad – 382405

To,

M/s. Amjadkhan Abdulgani Pathan, (New Address)

Prop. Bharat Logistic,

17, Shyam Icon, Nr. S.P. Ring Road,

Aslali, Ahmedabad – 382427

Copy to :

1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST and Central Excise, Ahmedabad South.
3. The Deputy/Assistant Commissioner (RRA), CGST and Central Excise, Ahmedabad South.
4. The Assistant Commissioner, CGST & CEX, Division - IV, Ahmedabad South Commissionerate.
5. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication of OIA on website.

~~6.~~ Guard file.

7. PA File.



