



सत्यमेव जयते

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

**By SPEED POST**

DIN:- 20231264SW0000888DC0

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/2441/2023 / 811
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-158/23-24 and 20.11.2023
(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	28.12.2023
(ङ)	Arising out of Order-In-Original No. 76-77/ADC/MR/2022-23 dated 29.11.2022 passed by The The Additional Commissioner, CGST & Central Excise, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Fatesinh Bheruji Vanzara 45/2 Krishna Gokul Society Nr. Priya Cinema, Krushnanagar Ahmedabad - 382345

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, 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 :-

(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 भीतर मूल-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 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.

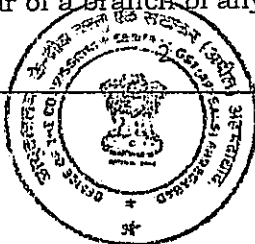
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 :-

(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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

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 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 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.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपीलो 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. Fatesinh Bheruji Vanzara, situated at 45/2, Krishna Gokul Society, Near Priya Cinema, Krishnanagar, Ahmedabad-382345 (hereinafter referred to as "the appellant") against Order-in-Original No. 76-77/ADC/MR/2022-23 dated 29.11.2022 passed by The Additional Commissioner, Central GST & Central Excise, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant are holding Service tax Registration No AAGPV4695NST001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) and ST-3 for the FY 2016-17, it was noticed that the appellant has shown less amount of "Value of Services provided" in the ST-3 against the amount shown as "Total Amount paid/Credited Under 194C, 194H, 194I, 194J" and "Sales of Service" in their ITR filed with the Income Tax Department, as under:-

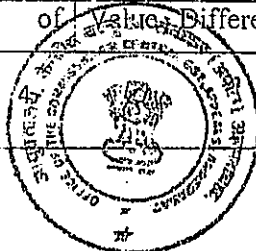
Sr. No.	Year	Total Gross Value as per STR	Sales of services(ITR)	Total Amount paid/Credited Under 194C, 194H, 194I, 194J	Value Difference in ITR & ST-3 Return	Service Tax short paid (in Rs.)
1.	2016-17	0	6,67,74,101/-	5,99,43,773/-	6,67,74,101/-	1,00,16,115/-

The appellant were called upon explanation along with the supporting documents viz. balance sheet, P & L Account, Income Tax Returns, Form 26AS and ST-3 for the concerned period. However, the appellant neither submitted any documents nor responded in satisfactory manner.

2.1 The appellant was granted a pre consultation on 20.10.2021. They have attended the same and submitted that they were engaged in providing GTA services which are exempted. In absence of the satisfactory reply/documents, the appellant was issued Show Cause Notice No. STC/15-296/OA/2021 dated 21.10.2021 demanding Service Tax amounting to Rs. 1,00,16,115/- for the period 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 and imposition of penalties under Section 77 and Section 78 of the Finance Act, 1994.

2.2 further. on verification of the data received from the Central Board of Direct Taxes (CBDT) and ST-3 for the FY 2015-16, it was also observed that they have shown less taxable value in their ST-3 details of which are as under:

Sr.	Year	Total Gross	Sales	of Value Difference	Service Tax
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No.		Value as per STR	Services (GTR)	in ITR & ST-3 Return	short paid (in Rs.)
1.	2015-16	0	1,25,47,233/-	1,25,47,233/-	18,82,085/-

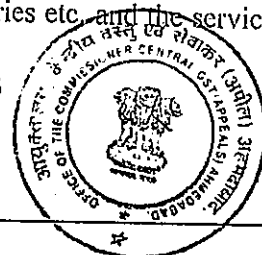
Therefore, the SCN F. NO. AR-I/Third Party/Sunil kumar/2015-16/19-20 dated 29.12.2020 was issued to M/s fatesinh Bheruji Vanzara by the Assistant Commissioner, CGST & C. Ex., Division-I, Ahmedabad North demanding Service Tax amounting to Rs. 18,82,085/- for the period F.Y. 2015-16 under Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 and imposition of penalties under Rule 7 of the Service Tax Rules, 1994, Section 76, and Section 78 of the Finance Act, 1994.

2.3 In response of the SCN dated 21.10.2021 issued by the Addl. Commr., CGST & C. Ex., Ahmedabad North, the appellant filed their submission vide letter dated 18.11.2021 and submitted that they are providing GTA services only to the specific service recipient and liability to paying service tax has been shifted upon service receiver as per Notification No 30/2012-ST dated 20.06.2012. The appellant also attended the personal hearing on dated 18.11.2022 and reiterated their earlier written submission dated 18.11.2021.

The adjudicating authority considered that the appellant is not required to pay service tax on the income received from M/s Hindustan Petroleum Corporation Ltd., M/s Essar Oil Ltd, M/s GSPC Ltd., M/s fine Tech Corporation Ltd. For the rest of the amount, as the appellant failed to present satisfactory evidences, the demand was confirmed accordingly. Both the above Show Cause Notices were adjudicated considering the above facts, vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 7,10,040/- 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 & 2016-17. Further (i) Penalty of Rs. 7,10,040/- was also 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; (iii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994; (iv) Penalty of Rs. 40,000/- was imposed on the appellant under Section 70(1) of the Finance Act, 1994; read with Rule 7C of the Service Tax Rules, 1994. The adjudicating authority refrained from imposition of penalty on the noticee under Section 76 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 submitted that he (Service Tax Registration -. AAGPV4695NST001) is truck owner and using his truck for Transportation of Goods by road. He is providing services of "Transportation of Goods by Road " to various body corporates/Firms/Excise Dealers/Factories etc. and the service recipients who pay the



freight are liable to pay service tax on such services under Reverse Charge Mechanism (RCM) as per Notification No. 30/2012-ST. The activity "transportation of Goods by road" of goods like Petrol, Diesel, fuels and other petroleum products are covered under clause (p) of negative list.

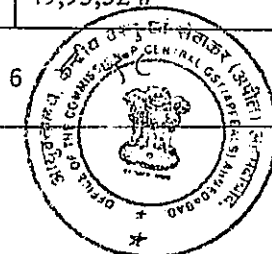
- The appellant submitted that they have filed their submission timely but the Impugned Order has been passed by the adjudicating authority without considering the submission, facts and documentary evidences. They didn't get registered with the service tax authorities because as per section 69 of The Finance Act 1994, Only person liable to pay service tax is required to be registered.
- The appellant states that SCNs were issued without any investigation and merely based on the false assumption that everything stated in IT Form under the Income Tax Law is taxable under the service tax law.
- For the year 2015-16 and 2016-17 details of calculation and addition made on order in original and submission regarding the addition are as under;

## As per OIO(2015-16)

Sr. No.	Particulars	Amount in Rs.	Amount in Rs.
1	Total Transportation Income as per Financial statement		1,25,47,233/-
2	Non taxable as per OIO		
(i)	HPCL	14,69,639/-	14,69,639/-
(ii)	Essar Oil Ltd.	32,36,083/-	32,36,083/-
3(1-2)	Taxable as per OIO		78,41,511/-

## As per Appellant Submission(2015-16)

Sr. No.	Particulars	Amount in Rs.	Amount in Rs.
1	Taxable as per OIO		78,41,511/-
2	Services provided to partnership firms		
(i)	Dharmatar Motor Corporation	34,000/-	
(ii)	Dharmatar Motor Services	1,00,400/-	
(iii)	Shreeji Motor Corporation	10,51,535/-	
(iv)	Anmol Logistic	8,97,178/-	
Total(i to iv)		20,83,113/-	20,83,113/-
3	Services provided to Others		
(i)	Anopsinh Jadeja	49,93,524/-	



(ii)	Dharmendra B. Vanzara	5,54,969/-	
(iii)	HDFC Bank	71,005/-	
(iv)	Navdurga sales	26,000/-	
(v)	Poojan Enterprises	79,000/-	
(vi)	SBI bank	18,000/-	
(vii)	Shree Krishna Motor	15,900/-	
Total(i to vii)		57,58,398/-	57,58,398/-
	Gross total		78,41,511/-

(iv) Anmol logistic : The appellant submitted that they have provided service of transportation of goods by road to BPCL Bharat Petroleum (government entity) though Anmol logistic.

(i) Anopsinh Jadeja Rs. 49,93,524/-:o Appellant has provided service of transportation of goods by road to Fine Tech Corporation Pvt Ltd (Group of reliance company) though Anopsinh Jadeja. They have submitted the term sheet for provision of service of transportation of petroleum products and working bills given to fine tech corporation pvt ltd by anopsinh Jadeja for appellant's vehicles.

(ii) Dharmendra B. Vanjara Rs. 5,54,969/-:The Appellant has provided service of transportation of goods by road to BPCL (government entity) though Dharmendra B Vanjara

(iii) HDFC Bank Rs. 71,005/- : The appellant directly received in their bank account for providing service of transportation goods by road.

(vi) SBI Bank Rs. 18,000/-: The appellant directly received in their bank account for providing service of transportation goods by road.

The Appellant also provided service of transportation of goods by road of Rs. 1,20,900/- to individuals (Sr. No iv, v & vii).

As per OIO-2016-17

Sr. No.	Particulars	Amount in Rs.	Amount in Rs.
1	Total Transportation Income as per Financial statement		6,67,74,101/-
2	Non taxable as per OIO		
(i)	HPCL	19,49,017/-	
(ii)	Essar Oil Ltd.	4,35,28,656/-	
(iii)	GSPC LTD.	30,000/-	
(iv)	Fine Tech Corporation Pvt. Ltd.	1,30,67,900/-	
	Total (I to iv)	5,85,75,573/-	5,85,75,573/-

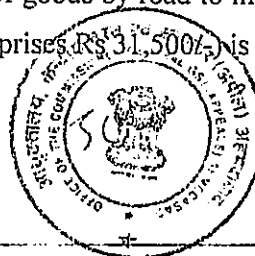


3(1-2)	Taxable as per OIO		81,98,528/-
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As per Appellant Submission(2016-17)

Sr. No.	Particulars	Amount in Rs.	Amount in Rs.
1	Taxable as per OIO		81,98,528/-
2	Amount difference(Considered in OIO and Books of Accounts)		
(i)	Essar Oil Ltd.	45,65,554/-	
(ii)	Fine Tech Corporation Pvt Ltd	17,27,274/-	62,92,828/-
2	Services provided to partnership firms		
(i)	Dharmatar Motor Corporation	54,000/-	
(ii)	Dharmatar Motor Services	62,000/-	
(iii)	Shreeji Motor Corporation	3,28,000/-	
(iv)	Swarna Oil Services	12,000/-	
Total(i to iv)			4,56,000/-
3	Services provided to Others		
(i)	Anopsinh Jadeja	13,68,200/-	
(ii)	Chaudhary Consultancy	50,000/-	
(iii)	Poojan Enterprises	31,500/-	
Total(i to iii)		14,49,700/-	14,49,700/-
	Gross total		81,98,528/-

- The appellant submitted that amount Rs. 4,35,28,656/- considered non-taxable in OIO in case of M/s Essar Oil Ltd. is less than actual amount Rs. 4,80,49,210/- further, the amount Rs. 1,30,67,900/- considered non-taxable in OIO in case of M/s Fine Tech Corporation Pvt Ltd is also less than actual amount Rs 1,47,95,172/- Both the above amounts considered as non-taxable in OIO does not match with the amount in Books of accounts. Therefore, the difference is occurred. In both the cases the service is provided to body corporate and liability of paying service tax is upon recipient as per Notification No 30/2012-ST dated 20.06.2012.
- Further , they submitted that they have provided service of transportation of goods by road to M/s Fine tech Corporation Pvt. Ltd(Reliance group company) through Anopsinh Jadeja. Service of transportation of goods by road to individuals Choudhary consultancy (Rs. 50,000/-) and Poojan Enterprises, Rs. 31,500/- is also given by them.





- The appellant submitted that the demand raised on the basis of the reconciliation of income shown in ITR with the books of account without further enquiry and considering the submission is not legally sustainable. They denied all the demand confirmed vide impugned OIO and requested that same may be quashed and set-aside.

4. Personal hearing in the case was held on 06.10.2023. Shri Prakash Nandola, Chartered Accountant, appeared on behalf of the appellant for personal hearing and reiterated the submission made in the appeal. He requested to allow their appeal.

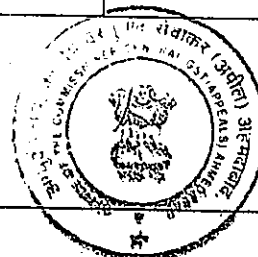
5. On going through the appeal memorandum, it is noticed that the impugned order was issued on 29.11.2022. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, during the course of personal hearing and documents available on record. The issue 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 & 2016-17.

6. I find that in the SCN in question, the demand has been raised for the period FY 2015-16 & 2016-17 based on the Income Tax Returns filed by the appellant. Except for the value of "Sales of Services" provided by the Income Tax Department, no other reason or justification is seen from the SCN for raising the demand against the appellant. As the appellant has shown their income from "Sales of Services" in their ITR filed for the F.Y 2015-16 & 2016-17, but neither they got registered with the service tax department nor paid any service tax for the concerned period. Even after multiple submission filed by the appellant, the adjudicating authority confirmed the part demand in absence of the sufficient documentary evidence.

7. It is observed that the main contentions of the appellant in the appeal memorandum is that they have provided majority portion of their service of transportation of goods by road to various body corporate, partnership firms and liability of paying service tax is upon recipient as per Notification No 30/2012-ST dated 20.06.2012. The service is provided to only a few individuals in both the financial years 2015-16(Rs. 1,20,900/-) & 2016-17(Rs. 81,500/-) of very small amount.

8. As per the submission for F.Y. 2015-16, the adjudication authority considered the total value Rs. 78,41,511/- as taxable. The appellant filed their submission before me in which they state that they have provided the service to following Partnership firms:

Sr. No.	Name of partnership firms	Amount in Rs.
(i)	Dharmatar Motor Corporation	34,000/-



(ii)	Dharmatar Motor Services	1,00,400/-
(iii)	Shreeji Motor Corporation	10,51,535/-
(iv)	Anmol Logistic	8,97,178/-
Total(i to iv)		20,83,113/-

As per submission, all above 04 firms were discharging their service tax liability under RCM as per Notification No 30/2012-ST dated 20.06.2012. The appellant has furnished the ledgers, PAN of the above Firms, sample service tax payment challans etc in support of their claim. For reference the relevant portion of Notification No 30/2012-ST dated 20.06.2012 is reproduced as under:

*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;*

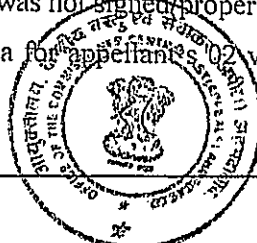
*(II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely:-*

Table

Sl.No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
1	....	....	....
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>	<i>Nil</i>	<i>100%</i>
3	....	....	....

From the above the contention made by the appellant appears to be sustainable.

8.1 Further, the Appellant has claimed that they provided service of transportation of goods by road to Fine Tech Corporation Pvt. Ltd through Anopsinh Jadeja of Rs. 49,93,524/- during the F.Y 2015-16. They have submitted the term sheet for provision of service of transportation of petroleum products but the same was not signed/proper. Working bills given to fine tech corporation pvt ltd by anopsinh Jadeja for appellant's 02 vehicles/Tankers were



also furnished. In absence of the proper agreement/sufficient documentary evidence, the service tax liability can't be ascertained in the instant case. As the appellant failed to submit the proper agreement, Bills and other relevant documentary evidences in support of their claim, the benefit of service tax liability under RCM as per Notification No 30/2012-ST dated 20.06.2012 can't be given to them. Hence the contention of the appellant for this appears are not sustainable.

8.2 The Appellant has claimed that they have provided service of transportation of goods by road to BPCL (government entity) though Dharmendra B Vanjara of Rs. 5,54,969/- in support of their claim they have furnished the Income ledgers & and a certificate of "Confirmation of Accounts" for the period from 01.04.2015 to 31.03.2016 issued by M/s Anmol Logistics. The appellant have failed to furnished any agreement/sufficient documentary evidence which can prove that the services by the appellant were provided to BPCL. Therefore, the contention of the appellant for this appears to be unsustainable in the instant case.

8.3 The appellant has provided service of transportation of goods by road to HDFC Bank of Rs. 71,005/- .

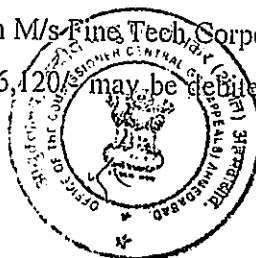
8.4 The appellant has provided service of transportation of goods by road to SBI Bank of Rs. 18,000/-.

In both the above cases the service tax liability comes upon the service recipient under RCM as per Notification No 30/2012-ST dated 20.06.2012.

8.5 The Appellant also provided service of transportation of goods by road of total Rs. 1,20,900/- to individuals i.e. M/s Navdurga sales, M/s Poojan Enterprises & M/s Shree Krishna Motor.

8.6 Form the above, it can be seen that the benefit of service tax liability upon the service recipient under RCM as per Notification No 30/2012-ST dated 20.06.2012 may be extended to the appellant only of taxable amount Rs. 21,82,118/- out of total 78,41,511/- and service tax on remaining taxable amount Rs. 56,59,336/- is recoverable from them.

9. As per the submission for F.Y. 2016-17, the adjudication authority considered the total value Rs. 81,98,528/- as taxable. The appellant submitted that amount Rs. 4,35,28,656/- considered non-taxable in OIO in case of M/s Essar Oil Ltd. is less than actual amount Rs. 4,80,49,210/-. Further, the amount Rs. 1,30,67,900/- considered non-taxable in OIO, in case of M/s Fine Tech Corporation Pvt Ltd is also less than actual amount Rs 1,47,95,172/-. Both the above amounts considered as non-taxable in OIO does not match with the amount in Books of accounts. They have furnished the income ledgers of both the service recipients for the concerned period. From the ledgers it is seen that they have received Rs. 4,76,58,183/- from M/s Essar Oil Ltd and Rs. 1,46,64,493/- from M/s Fine Tech Corporation Pvt Ltd during the F.Y. 2016-17. Therefore the amount Rs. 57,26,120/- may be debited from the difference



amount Rs. 68,30,328/- considered taxable in OIO. In both the cases the service is provided to body corporate and liability of paying service tax is upon recipient as per Notification No 30/2012-ST dated 20.06.2012. The same was also considered in the impugned OIO. Therefore, the contention of the appellant appears to be sustainable.

9.1 Further, the appellant submitted that they have provided the service to following Partnership firms:

Sr. No.	Services provided to partnership firms	
(i)	Dharmatar Motor Corporation	54,000/-
(ii)	Dharmatar Motor Services	62,000/-
(iii)	Shreeji Motor Corporation	3,28,000/-
(iv)	Swarna Oil Services	12,000/-
Total		4,56,000/-

As per submission, all above 04 firms were discharging their service tax liability under RCM as per Notification No 30/2012-ST dated 20.06.2012. The appellant has furnished the ledgers, PAN of the above Firms, sample service tax payment challans etc in support of their claim. Accordingly, the contention of the appellant appears to be sustainable.

9.2 Further, the Appellant has provided service of transportation of goods by road to Fine Tech Corporation Pvt. Ltd through Anopsinh Jadeja of Rs. 13,68,200/- during the F.Y 2016-17. They have submitted the term sheet for provision of service of transportation of petroleum products but the same was not signed/proper. Working bills given to fine tech corporation pvt ltd by anopsinh Jadeja for appellant's 02 vehicles/Tankers were also furnished. In absence of the proper agreement/sufficient documentary evidence, the service tax liability can't be ascertained in the instant case. Therefore, the contention of the appellant for this appears to be unsustainable.

9.3 The Appellant also provided service of transportation of goods by road of total Rs. 81,500/- to individuals i.e. Choudhary consultancy (Rs. 50,000/-) and Poojan Enterprises (Rs 31,500/-).


9.4 Form the above, it can be seen that the benefit of service tax liability upon the service recipient under RCM as per Notification No 30/2012-ST dated 20.06.2012 may be extended to the appellant only of taxable amount Rs. 61,82,120/- out of total 81,98,528/- and service tax on remaining taxable amount Rs. 20,16,408/- is recoverable from them.

10. In light of the above discussion, I find that the said assessee is liable to pay service tax as under:



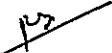
year	Taxable Amt in Rs. as per OIO (i)	Non taxable out of Rs. Mentioned in (i) as Supporting docs. Furnished (ii)	Difference on which service tax is recoverable (i-ii)	Taxable value after 70% abatement as per Noti. 08/2015 dtd 01.03.15	S. Tax amount @ 15%
2015-16	78,41,511/-	21,82,118	56,59,336/-	16,97,801/-	2,54,670/-
2016-17	81,98,528/-	61,82,120/-	20,16,408/-	6,04,922/-	90738/-
total	1,60,40,039/-	83,64,238/-	76,75,744/-	23,02,723/-	3,45,408/-

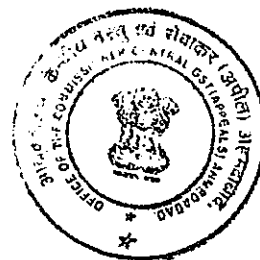
11. From the above discussion I am of the considered view that the demand on the taxable value Rs. 83,64,238/- is liable to be dropped and demand of Rs. 3,45,408/- on the taxable value Rs. 76,75,744/- is recoverable from the appellant along with appropriate interest and penalty.
12. In view of above, I uphold the impugned OIO with extent to service tax demand of Rs. 3,45,408/- along with applicable interest.
13. As the said assessee also failed to furnish the documents, the adjudicating authority correctly held them liable for penalty under Section 77(1) (c) & 77(2) of the Act. However, the penalty is reduced to Rs. 5,000/- each in case of 77(1) (c) & 77(2) of the Act.
14. Further, I find that the appellant failed to file their ST-3 returns properly and correctly assess their Service Tax liability under Finance Act, 1994 & Service tax Rules, 1994. Thus contravened the provisions under Section 70 of the Finance Act, 1994 and therefore the adjudicating authority correctly held them liable for penalty under Section 70 of the Act.
15. As the service tax demand is limited to Rs. 3,45,408/-, the equal penalty of Rs. 3,45,408/- is imposed under section 78 of the Finance Act, 1994.
16. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
The appeal filed by the appellant stands disposed of in above terms.

  
(ज्ञानचंद जैन)  
आयुक्त (अपीलिया)

Date : 20.11.2023

Attested

  
Manish Kumar  
Superintendent (Appeals),  
CGST, Ahmedabad



**By RPAD / SPEED POST**

To,  
M/s. Fatesinh Bheruji Vanzara,  
Situatd at 45/2, Krishna Gokul Society,  
Near Priya Cinema, Krishnanagar,  
Ahmedabad-382345

Appellant

The Additional Commissioner,  
CGST, Ahmedabad North

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Additional Commissioner, CGST, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North  
(for uploading the OIA)
- 5) Guard File
- 6) PA file

