



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:- 20240264SW0000210206

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/3863/2023 & / 1598 GAPPL/COM/STP/4443/2023
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-213 to 214/23-24 and 30.01.2024
(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	31.01.2024
(ङ)	Arising out of Order-In-Original No. 57/DC/D/VM/22-23 dated 1.2.2023 and 64/DC/D/VM/22-23 dated 1.2.2023 passed by The Deputy Commissioner, CGST, Division-III, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Rameshbhai Kanjibhai Thakkar 1, Shri Hari Oil Mill Opp. Munikrupa Rice Mill, Viramgam Road Ahmedabad - 382110

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 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 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**

M/s. Rameshbhai Kanjibhai Thakkar, 1, Shri Hari Oil Mill, Opposite Munikrupa Rice Mill, Viramgam Road, Ahmedabad-382110 (hereinafter referred to as '*the appellant*') have filed following appeals against the Order-in-Originals (referred in short as '*impugned order*') passed by the Deputy Commissioner, Central GST, Division-III, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*') listed below.

**Table-A**

Sr. No.	Appeal No.	SCN No. Date	OIO No and Date	Period of Dispute	Amount Involved
A	B	C	D	E	F
01	GAPPL/COM/STP/3863/2023	III/SCN/AC/Rameshbhai Kanjibhai Thakkar/128/2021-22 dated 14.10.2021	57/DC/D/VM/2022-2023 dated 01.02.2023 Referred to as Impugned Order -1	2016-17	Rs.14,97,249/-
02	GAPPL/COM/STP/4443/2023	III/SCN/AC/ Rameshbhai Kanjibhai Thakkar/129/2021-22 dated 14.10.2021	64/DC/D/VM/2022-2023 dated 01.02.2023 Referred to as Impugned Order -2	2016-17	Rs.14,87,060/-

2. The facts of the case, in brief, are that the appellant were holding Service Tax Registration No. **ACDPT9674QST002** under renting of immovable property services. They were also holding Registration No. **ACDPT9674QST001** under GTA service. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the F.Y 2016-17, substantial difference was noticed in the 'Gross Value of Services' declared in the ST-3 Return by the appellant compared to the income reflected under the heads "Sales / Gross Receipts from Services (Value from ITR)" filed with the Income Tax department. It appeared that the appellant, have mis-declared/ suppressed taxable income therefore, they were called upon to submit copies of Balance Sheet, Profit & Loss Account, Income Tax Return, Form 26AS, for said period. However, they did not respond to the letters issued by the department. The appellant were therefore issued separate Show Cause Notices for above mentioned registrations.

2.1 The SCN bearing No. III/SCN/AC/Rameshbhai Kanjibhai Thakkar/128/2021-22 dated 14.10.2021 was issued (*for Registration No. ACDPT9674QSD002*) proposing Service Tax demand of Rs.14,97,249/- for the F.Y 2016-17, under proviso to Section 73(1) of the Finance Act, 1994; 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 were also proposed.

**Table-B**

F.Y.	Sale of service as per ITR	Value shown in ST-3 return	Service tax rate	Service tax payable
2016-17	99,81,659/-	0/-	15%	14,97,249/-

2.2 Another SCN No. III/SCN/AC/ Rameshbhai Kanjibhai Thakkar/129/2021-22 dated 14.10.2021 was also issued to the appellant (*for Registration No. ACDPT9674QST001*) proposing Service Tax demand of Rs.14,87,060/- for the F.Y 2016-17 under proviso to



Section 73(1) of the Finance Act, 1994; recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 77(1)(a), Section 77(1)(c), Section 77(2) and Section 78 of the Finance Act, 1994 were also proposed.

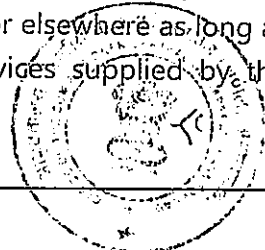
**Table-C**

F.Y.	Sale of service as per ITR	Value shown in ST-3 return	Service tax rate	Service tax payable
2016-17	99,81,659/-	67,923/-	15%	14,87,060/-

2.3 The aforesaid Show Cause Notices were adjudicated vide the impugned orders listed at column (D) of Table-A above, wherein the Service Tax demands were confirmed along with interest. Penalty equal to tax confirmed was imposed on the appellant under Section 78 of the Finance Act, 1994; Penalty of Rs. 10,000/- each was also imposed under Section 77(1) and Section 77(2).

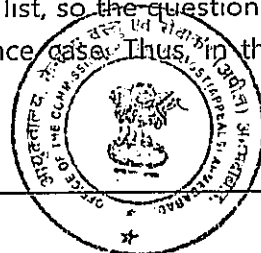
3. Being aggrieved with the impugned orders passed by the adjudicating authority, the appellant have preferred the present appeal on the grounds elaborated below;

- Assessment of service tax based on receipt of data from the CBDT considering higher difference value between ST-3 Return, Income Tax Return (ITR) and Form 26AS is not sustainable. Reliance placed on following decisions;
  - Shresth Leasing & Finance Ltd. v. Commissioner of Central Excise & Service Tax, Surat-1 [2023] (68) G.S.T.L. 143 (Tri.-Ahmd)/(2022) 1 Centax 64 (Tri.-Ahmd) [15-07-2022],
  - CCE v. Tahal Consulting Engineers Ltd. [2016] 44 STR 671 (Trib. - Delhi)
  - Synergy Audio Visual Workshop (P.) Ltd. v. CST [2008] 14 STT 321/10 STR 578 (Trib. -Bang.)
- The appellant is engaged in the business of renting of immovable property for storage and warehousing of agricultural produce. During the F.Y 2016-17, the appellant had generated an income of Rs. 9,42,000/- from the supply of said services. Copy of Rent Agreement is submitted. Further, the amount of Rs.99,81,659/- has been considered for assessment, which is relating to Goods Transport Agency (GTA) services, based on which the service tax liability has been computed by the adjudicating authority. During the F.Y 2016-17, the appellant has supplied renting of immovable services for storage and warehousing agricultural produce (i.e., Cattle Feed) to Nilkanth Trading Company. A confirmation to that extent has been obtained from the service receiver and copy of the same is also submitted. Section 66D prescribed 'negative list' which includes services relating to agriculture or agricultural produce by way of loading, unloading, packing, storage or warehousing of agricultural produce. Further, the terms agricultural produce is also defined in Section 65B (5) of the F.A., 1994 which includes specified processes in the definition like tending, pruning, grading, sorting etc. which may be carried out at the farm or elsewhere as long as they do not alter the essential characteristics. Thus, services supplied by the



appellant for storage and warehousing of agricultural produce (cattle feed) falls under the negative list and accordingly, the service tax is not chargeable on the same. Reliance is placed on decision passed in the case of *Krishi Upaj Mandi Samiti v. Commissioner of C. Ex. & S.T., Jaipur-1 & II, 2017 (4) G.S.T.L. 346 (Tri. – Del)*.

- In respect of the demand confirmed under Impugned Order No.-2, the appellant claim that, Section 68(2) of the Finance Act, 1994 provides in respect of such taxable services as may be notified by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section 66B and all the provisions of this Chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service, i.e., on reverse charge basis. Also, vide Notification No. 30/2012-Service Tax dated 20th June, 2012, the Central Government had notified the taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of section 68(2) of the Finance Act, 1994 under reverse charge basis.
- Further, Notification No. 25/2012-Service Tax dated 20th June, 2012, exempts the prescribed taxable service from the whole of the service tax leviable thereon under Section 66B of the Finance Act, 1994 under Mega Exemption Notification.
- The appellant has provided services in relation to transport of goods by road and has issued consignment note to its customers. Sample copies of consignment notes are also enclosed, supra. Hence, the appellant is a GTA and had provided GTA services. During the FY 2016-17, the appellant had earned freight income of Rs. 99,81,659/- from the supply of said services. Notification No. 30/2012-Service Tax dated 20th June, 2012, had notified the taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of section 68(2) of the Finance Act, 1994 under reverse charge basis. GTA service is also covered in the said notification and in terms of said notification, the appellant is not liable to pay any tax as the liability lies on the recipient of the service. Reliance placed on *Narendra Road Lines Pvt. Ltd. v. Commr. Of Cus., C. Ex. & CGST, Agra [2022]* (64) G.S.T.L. 354 (Tri. - AII.). Customer wise freight income for the FY 2016-17 showing service tax paid by the recipient under reverse charge and other particulars are also submitted. Further the copies of declarations obtained from customers / service recipient regarding payment of services tax under reverse charge basis are also enclosed herewith. Thus, the GTA services supplied by the appellant falls under reverse charge and the service recipient has duly paid the service tax and accordingly, demand for payment of service tax should be dropped, quashed and set aside.
- Extended period of limitation under proviso to Section 73(1) of the Finance Act, 1994 cannot be invoked as services are covered under negative list and there cannot be short levy or short-payment of service tax on it. The appellant has supplied services which are covered under negative list, so the question of short-levy or short-payment does not arise in the instance case. Thus, in the instant



case, the period of limitation cannot be invoked and order invoking such provisions should be quashed and set aside.

- Interest on service tax u/s 75 of the Finance Act, 1994 cannot be charged as there is no liability to pay service tax. Section 75 of the Finance Act, 1994 deals with the provisions on interest on delayed payment of service tax. The appellant has supplied services which are covered under negative list and therefore, there cannot be any tax liability, consequently, there cannot be interest liability.
- Penalty u/s 77(1), 77(2) and 78 of the Finance Act, 1994 cannot be levied as there is no liability to pay service tax: Section 77 of the Finance Act, 1994 provides for the levy of general penalty which can be levied for contravention of rules and provisions of Act for which no penalty is specified elsewhere. The appellant has supplied services which are covered under negative list, so the question of short-levy or short-payment does not arise and the period of limitation can also not be invoked. Thus the order for levy of penalty should be dropped, quashed and set aside.

4. Personal hearing in both the matter was held on 11.01.2024. Shri Parth Joshi & Shri Brijesh Thakkar, Chartered Accountants appeared on behalf of the appellant. They reiterated the submissions made in the Appeal Memorandum. They stated that they have two Service Tax Registrations. One is for renting of immovable property and second for GTA. Renting is for agricultural produce covered in negative list and in GTA the liability is in RCM.

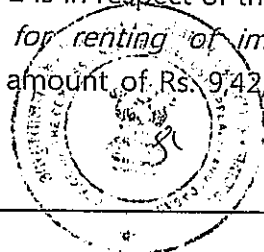
5. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made by the appellant in the appeal memorandums and the submissions made during personal hearing. The issue to be decided in the present appeal is as to whether the service tax demand of Rs.14,97,249/- and Rs.14,87,060/- alongwith interest and penalties, confirmed in the impugned orders 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. 2016-17.

5.1 From the Profit & Loss Account submitted by the appellant, it is observed that the appellant is running three businesses under the trade names Jalaram Roadlines, Jalaram Traders & Rameshbhai Thakkar. In the Profit & Loss Account, the appellant have shown following income;

Direct Income	Amount	Trade Name
Freight Income	99,81,659/-	Jalaram Roadlines
Godown Rent Income	9,42,000/-	Rameshbhai Thakkar

5.2 It is observed that the demand in **Impugned Order-1** is in respect of the Service Tax Registration No. **ACDPT9674QST002** (*registration for renting of immovable property*). In the P&L Account, the appellant have shown amount of Rs. 9,42,000/- as



Godown Rent income. I find that this income is over and above the income of Rs. 99,81,659/- shown in the P&L Account. As the Godown Rent income of Rs. 9,42,000/- is not part of the disputed income of Rs. 99,81,659/-, I refrain from giving any findings on the said income. However, as regards the income of Rs. 99,81,659/-, I find the same is freight income earned by M/s. Jalaram Roadlines and for which the appellant has obtained separate registration No. **ACDPT9674QST001** under GTA service and for which the appellant has been issued a separate notice. This notice was adjudicated vide Impugned Order No.2.

5.3 As on the freight income Rs.99,81,659/- as already a separate demand and adjudication order exist, I, therefore, find that demand of Rs.14,97,249/- raised vide Impugned Order No-1 on the taxable income of Rs. 99,81,659/- is not legally sustainable, as the same pertains to freight income earned by M/s. Jalaram Roadlines, having separate registration under GTA service. I, therefore, set-aside the Impugned Order No.-1 demanding Service tax demand of Rs.14,97,249/- alongwith interest and penalty.

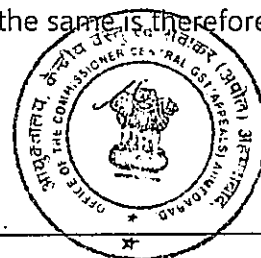
6. Coming to the service tax demand of **Rs.14,87,060/-** confirmed alongwith interest and penalties, vide **Impugned Order-2**, it is observed that the said demand has also been raised for Service Tax Registration No. **ACDPT9674QST001** in respect of the income Rs. 99,81,659/- earned during the F.Y. 2016-17. From the Profit & Loss Account, I find that the appellant has shown the income of Rs. 99,81,659/- under Freight Income.

6.1 The appellant claim that they have rendered Goods Transport Agency (GTA) Service and under RCM the liability to discharge service shall lie on the service recipient. They submitted copy of consignment notes issued by them in the name of Shree Jalaram Roadlines; Certificate issued by M/s. Aries Agro Ltd. certifying that the appellant has provided services of transportation of goods during the F.Y. 2016-17 valued at Rs.88,31,682/- alongwith invoice wise details; Certificate issued by Fairchem Organics Ltd certifying that the appellant has provided services of transportation of goods during the F.Y. 2016-17 valued at Rs.9,49,414/- and Certificate issued by Ipca Laboratories Ltd. certifying that the appellant has provided services of transportation of goods during the F.Y. 2016-17 valued at Rs.89,500/-.

6.2 From the above facts, I find that the appellant out of the total income of Rs.99,81,659/-, have rendered GTA services valued at Rs.98,70,596/- to service recipient who in terms of Notification No. 30/2012-ST dated 20.06.2012 shall be liable to discharge the tax liability as they fall under the specified categories of the said notification.

6.3 For the remaining income of Rs.1,11,063/-, it is noticed that on the income of Rs.67,923/- the appellant in the ST-3 return (*filed in respect of GTA service*) have paid tax on forward charge. But, on the remaining income of Rs. 43,140/-, they have not produced any proof evidencing the fact that the liability to pay tax lies on service recipient. I, therefore, find that on the income of Rs.43,140/- the appellant shall be liable to discharge service tax amount of **Rs.6,471/-** alongwith interest.

7. When the demand sustains there is no escape from interest, the same is therefore recoverable with applicable rate of interest.





8. I find that the imposition of penalty under Section 78 is also justifiable as it provides penalty for suppressing the value of taxable services. Hon'ble Supreme Court in case of *Union of India v/s Dharamendra Textile Processors* reported in [2008 (231) E.L.T. 3 (S.C.)], considered such provision and came to the conclusion that the section provides for a mandatory penalty and leaves no scope of discretion for imposing lesser penalty. I find that the appellant was rendering a taxable service but suppressed the value of taxable service in their ST-3 Return and hence such non-payment of service tax undoubtedly brings out the willful mis-statement and fraud with intent to evade payment of service tax. If any of the circumstances referred to in Section 73(1) are established, the person liable to pay duty would also be liable to pay a penalty equal to the tax so determined.

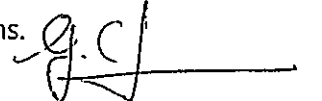
9. As regards the imposition of penalty under Section 77(1) & 77(2) is concerned, I find that the same is also imposable as the appellant were rendering the taxable service but failed to correctly assess their tax liability thereby filed incorrect ST-3 Return. I, therefore, uphold the penalty of Rs.10,000/- each under Section 77(1) & 77(2) of the Finance Act, 1994.

10. In view of the above discussion, I pass the following order;

a) The **Impugned Order No-1** confirming the service tax demand of Rs.14,97,249/- is set-aside alongwith interest & penalty.

b) The **Impugned Order No-2** is partially upheld. The appellant is required to discharge the tax liability of Rs.6,471/- alongwith interest & penalties as discussed at para-6-8 supra.

11. 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.

  
(ज्ञानचंद जैन)  
आयुक्त (अपील्स)

Date: 30.1.2024

Attested



(रेखा नायर)

अधीक्षक(अपील्स)

सी. जी. एस. टी, अहमदाबाद

By RPAD/SPEED POST

To,

M/s. Rameshbhai Kanjibhai Thakkar,  
1, Shri Hari Oil Mill, Opposite Munikrupa Rice Mill,  
Viramgam Road,  
Ahmedabad-382110

Appellant



The Deputy Commissioner,  
CGST, Division-III,  
Ahmedabad North  
Ahmedabad

Respondent

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.  
(For uploading the OIA)
4. Guard File.

