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आयुक्त (अपील्स) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क:
O/O THE COMMISSIONER (APPEALS), CENTRAL GST & EXCISE,



द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952/2441142
Email: cexappealsrajkot@gmail.com

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No. V2/32 & 42 /BVR/ 2017	मूल आदेश सं / O.L.O. No. 70 & 71/AC/Stax/Div/2016- 17	दिनांक / Date 05.01.2017
ख	अपील आदेश संख्या (Order-In-Appeal No.):		

BHV-EXCUS-000-APP-170-TO-171-2017-18

आदेश का दिनांक / Date of Order:	28.02.2018	जारी करने की तारीख / Date of issue:	14.03.2018
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Passed by **Shri Suresh Nandanwar, Commissioner, Central Goods and Service Tax (Audit), Ahmedabad.**

अधिसूचना संख्या २६.१७दिनांक (टी.एन) शु.उ.के-२०१७/१० २०१७.के साथ पढ़े बोर्ड ऑफिस आदेश सं . १६दिनांक टी.एस-२०१७/०५११,के अनुसरण में २०१७.श्री सुरेश नंदनवार ,आयुक्त , केन्द्रीय वस्तु एवं सेवा कर (लेखा परीक्षा)की धारा १९९अहमदाबाद को वित्त अधिनियम , ८५की १९४अयम केन्द्रीय उत्पाद शुल्क अधिनि . के अंतर्गत दर्ज की अधारा गई अपील के सन्दर्भ में आदेश पारित करने के उद्देश्य से अपील प्राधिकारी के रूप में नियुक्त किया गया है.

In pursuance to Board's Notification No. 26/2017-C.Ex.(NT) dated 17.10.2017 read with Board's Order No. 05/2017-ST dated 16.11.2017, Shri Suresh Nandanwar, Commissioner, Central Goods and Service Tax (Audit), Ahmedabad has been appointed as Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 85 of the Finance Act, 1994.

- ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham :
- घ **अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellants & Respondent :-**
M/s Sachdeva Industries Ltd., Survey No. 93, Sihor Ahmedabad Road, Taluka : Vadia Sihor - 364 240

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

- (A) सीमा शुल्क ,केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम ,1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है ।/
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-
- (ii) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए ।/
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.
- (iii) उपरोक्त परिच्छेद 1(a) में बताए गए अपील के अलावा शेष सभी अपील सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- 380016 को की जानी चाहिए ।/

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

- (iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।

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.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/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 Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

- (B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियों संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी।

The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

- (iii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टैट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण ने अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है

- धारा 11 डी के अंतर्गत रकम
- सेनवेट जमा की ली गई गलत राशि
- सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, 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, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.

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

- amount determined under Section 11 D;
- amount of erroneous Cenvat Credit taken;
- amount payable under Rule 6 of the Cenvat Credit Rules

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) **भारत सरकार को पुनरीक्षण आवेदन :****Revision application to Government of India:**

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। /

In case of any loss of goods, where the loss occurs 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

- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केंद्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी 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.

- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /

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

- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इयूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा संन्यायविधि पर या बाद में पारित किए गए हैं। /

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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केंद्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केंद्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी 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.

- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। /

जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए। /

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पेटी कार्य से बचने के लिए यथास्थिति अपील न्यायाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers 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 lakh fee of Rs. 100/- for each.

- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये 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 adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-1 in terms of the Court Fee Act, 1975, as amended.

- (F) सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। /

Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

- (G) उच्च अपील न्यायाधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपील न्यायाधिकारी वेबसाइट www.cbec.gov.in को देख सकते हैं। /

For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in

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ORDER-IN-APPEAL

The appeals encapsulated herein below have been filed by M/s. Sachdeva Industries Ltd., Survey No.93, Sihor-Ahmedabad road, taluka:Vadia, Sihor, Distt.Bhavnagar (henceforth, "*appellant*") against the Order-in-Original No. 70 & 71/AC/STAX/DIV/2016-17 dated 05.01.2017 (henceforth, "*impugned order*") passed by the Assistant Commissioner, Service Tax Division, Bhavnagar (henceforth, "*adjudicating authority*").

Sr. No	Name of the appellant	Appeal No.
1	M/s. Sachdeva Industries Ltd.,Survey No.93,Sihor-Ahmedabad road, taluka:Vadia, Sihor,Distt.Bhavnagar	32/BVR/2017
2	M/s. Sachdeva Industries Ltd., Survey No.93,Sihor-Ahmedabad road,taluka:Vadia,Sihor, Distt.Bhavnagar	42/BVR/2017

2. Briefly stated, the facts of the case are that two show cause notices were issued to the appellants (1) dated 28.09.2015 for recovery of Service Tax including Cess amounting to Rs.3,53,620/- under Section 73(1) of the Finance Act,1994 along with interest under Section 75 and to impose penalty under Section 77 and 78 of the Finance Act,1994 and (2) for recovery of Service Tax including Cess amounting to Rs.1,513/- under Section 73(1) of the Finance Act,1994 along with interest under Section 75 and to impose penalty under Section 76 and 77 of the Finance Act,1994.

3. The above both show cause notices ^{was} ~~was~~ decided by the adjudicating authority vide impugned order wherein the adjudicating authority has confirmed the demand alongwith interest and penalty.

4. The appellant has filed the appeal mainly on the ground that the oxygen gas in Cylinder had been delivered at the place of the buyer. As per the expenses shown in Profit and Loss Account indicating the amount consisting the "Manufacturing expenses" and "Administrative Expenses" were part and parcel of the sale price at which the said goods had been sold out. They have sold out the said goods on FOR basis.

The appellant has also contested the suppression of facts and imposition of penalties.

5. Subsequent to the filing of appeals, Board vide Order No. 05/2017-Service Tax issued vide F.No. 137/13/2017-Service Tax dated 16.11.2017 has nominated the Commissioner, Central Tax Audit, Ahmedabad as Commissioner (Appeals)/Appellate Authority. Accordingly, I take up these appeals for consideration.

6. A personal hearing was held on 05.02.2018, wherein Shri N.K.Maru, Consultant appeared on behalf of the appellant and reiterated the grounds of appeals and also submitted the Chartered Accountant Certificate. He also drew attention to para No. 2 of Board's circular No. 643/34/2002-CX dated 01.07.2002 and requested to drop the proceedings.

7. I have carefully gone through the appeal papers. The impugned order passed on 05.01.2017 and the date of receipt of the same has been shown as 02.03.2017 by the appellant. Accordingly the appeal has been filed within prescribed time limit of three months under Section 85 of the Finance Act, 1994.

The appellant has paid the pre-deposit amount in both the appeals as under:-

Sr. No	Appeal No.	Amt Confirmed in OIO	Amt of pre deposit paid (7.5% of amt confirmed)	Challan No. and date
1	32/BVR/2017	S.Tax Rs 3,53,620	Rs.26,530	00810 dtd. 27.02.2017
2	42/BVR/2017	S.Tax Rs.1,513	Rs.115	01777 dtd. 02.03.2017

8. The issues to be decided are as under:-

- 1) Whether the expenses shown against "Loading, unloading and transportation" in Profit & Loss Account for the year 2010-11 to 2013-14 and for the further period 2014-15 are liable to Service tax under the category of 'Goods Transport Agency' service.
- 2) Whether extended period can be invoked in case of Appeal No. 32/BVR/2017
- 3) Whether penalties can be imposed under Section 77 & 78 in case of Appeal No. 32/BVR/2017 and under Section 76 in case of Appeal No. 42/BVR/2017.

9. First of all, I would examine the core issue i.e. liability of Service Tax under the category of "Goods Transport Agency" on the expenses "Loading, unloading and transportation" appearing in the Profit & Loss Account of the appellant. The appellant has in their Balance sheet for the year 2012-13 under the head other expenses (Note No. 26) shown Administrative expenses which are further bifurcated as under :-

Sr.No.	Sub head of Other expense (Note 26)	Detailed bifurcation of expenses
2	Administrative expense	Travelling & Conveying expenses, Insurance premium, Legal & Professional fees, Communication expense, Auditor remuneration, donation and charity, other administrative expense, Rent, Rates and Taxes, Sales commission and brokerage and Loading, Unloading and Transportation

From the above, it is evident that the appellant has borne the expense towards freight in the form of Loading, Unloading and Transportation.

10 Now I would examine the legal provisions to ascertain whether the appellant is liable to pay service tax on above expenses reflecting in the Balance sheet under the category of "Goods Transport Agency". As per Service Tax Rules, 1994, relevant Rule 2(1)(d)(B) specifies the person who is liable to pay service tax as under :-

" (B) in relation to service 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,-

- (I) *any factory registered under or governed by the Factories Act, 1948 (63 of 1948);*
- (II) *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;*
- (III) *any co-operative society established by or under any law;*
- (IV) *any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;*
- (V) **any body corporate established, by or under any law; or**
- (VI) *any partnership firm whether registered or not under any law including association of persons;*
any person who pays or is liable to pay freight either himself

or through his agent for the transportation of such goods by road in a goods carriage:

Provided that when such person is located in a non-taxable territory, the provider of such service shall be liable to pay service tax.

From the above, I find that the appellant, being body corporate is liable to pay service tax under "Goods Transport Agency" .

11 The appellant has submitted that they have cleared the excisable goods i.e oxygen gas in cylinder on FOR basis wherein the expenses i.e Loading, Unloading and Transportation were part and parcel of price at which the said oxygen gas in cylinder had been sold out. They have also produced a copy of CA certificate dated 03.10.2016 wherein it has been certified that the company has sold its product on FOR basis i.e. inclusive of all taxes, loading and unloading charges and transportation charges. It has been further certified that the company has not recovered any amount for loading and unloading and transportation charges from its customers. The appellant has also cited Board's circular No. 643/34/2002-CX dated 1.7.2002.

However, I find that liability to pay service tax arises in the event of making payment of the freight charges to the transporter and the same has no connection with the goods supplied to the buyer either on FOR basis or otherwise. The appellant has not disputed the fact that they have made payment to the transporter. I also note that the adjudicating authority has taken cognizance of appellants submission dated 25.11.2016 wherein the appellant had submitted a copy of Tax invoice No. 547 dated 17.12.2013 and related copy of challan issued by the appellant. The said invoice pertains to the transportation of 60 cylinders of oxygen to M/s. Sudarshan Steel Industries, Sihor. It was also submitted by the appellant before the adjudicating authority that they had paid total freight charges of Rs. 9800/- to the Truck owner. It was also confirmed by the appellant that they have not collected any said transportation charges from the buyer and that they have followed the same practice for all such clearances for the period under dispute. The Board's circular dated 1.7.2002 referred by the appellant pertains to clarification regarding determination of value for the purpose of charging Central Excise duty and is not relevant here as the present issue involves the liability of service tax.

From the above, I conclude that the appellant has been paying the freight charges himself. Hence as per the legal provisions provided under Rule 2(1)(d)(B) of Service tax Rules, 1994, the appellant is liable to pay service tax

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under the category of "Goods and Transport Agency " service involved in both the appeals i.e. 32/BVR/2017 and 42/BVR/2017.

12 Regarding the invocation of extended period, I observe that, in the present regime of liberalization, self-assessment and filing of ER - 1 /ST-3 returns online, no documents whatsoever are submitted by the assessee to the department and therefore, the department would come to know about such wrong doings only during audit or preventive/other checks. In the case of Mahavir Plastics versus CCE Mumbai, 2010 (255) ELT 241, it has been held that if facts are gathered by department in subsequent investigation extended period can be invoked. In 2009 (23) STT 275, in case of Lalit Enterprises vs. CST Chennai, it is held that extended period is invocable when department came to know of service charges received by appellant on verification of his accounts.

It is established principle of law that fraud and justice do not dwell together. An assessee acting in defiance of law has no right to claim innocence when he fails to exercise due care and diligence. It was so held in the case of K.I. International Ltd. Versus Commissioner of Custom, Chennai - 2012 (2) ECS (126) (Tri-Chen).

The Hon'ble Supreme Court in the case of Commissioner of C. Ex., Aurangabad Versus Bajaj Auto Ltd - 2010 (260) E.L.T. 17 (S.C.) - has held:

"12. Section 11A of the Act empowers the central excise officer to initiate proceedings where duty has not been levied or short levied within six months from the relevant date. But the proviso to Section 11A(1), provides an extended period of limitation provided the duty is not levied or paid or which has been short-levied or short-paid or erroneously refunded, if there is fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty. The extended period so provided is of five years instead of six months. Since the proviso extends the period of limitation from six months to five years, it needs to be construed strictly. The initial burden is on the department to prove that the situation visualized by the proviso existed. But the burden shifts on the assessee once the department is able to produce material to show that the appellant is guilty of any of those situations visualized in the Section."

In view of the above, I hold that the appellant is also liable to pay penalty under Section 78 of Finance Act, 1994 as confirmed in Order-In Original in respect of Appeal No. 32/BVR/2017

I find that Further the appellant have failed to assess correct service tax liability and did not discharge the same and failed to file the correct Service tax returns for the period from 2010-11 to 2013-14. Accordingly they have

rendered themselves liable to penal provisions under Section 77(2) of the Finance Act,1994 corresponding to Appeal No. 32/BVR/2017.

For the period 2014-15, the appellant has not paid the required Service Tax within the prescribed period. Hence the penalty under Section 76 has been correctly imposed by the adjudicating authority in respect of appeal No. 42/BVR/2017

13. In view of forgoing, both the appeals are rejected on the grounds of merit.

14. अपीलकर्ता 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.



(सुरेश नंदनवार)

आयुक्त

केंद्रीय कर लेखा परीक्षा

अहमदाबाद

F.No V2/32/BVR/2017

F.No. V2/42/BVR/2017

Date: 28.02.2018

By R.P.A.D.

To,
M/s. Sachdeva Industries Ltd.,
Survey No.93,Sihor-Ahmedabad road,
taluka:Vadia,Sihor,
Distt.Bhavnagar

Copy to:

1. The Chief Commissioner of CGST, Ahmedabad Zone.
2. The Principal Commissioner of Central Tax, Bhavnagar.
3. The Additional /Joint Commissioner, Central Tax , Bhavnagar.
4. The Asstt./Deputy Commissioner, Central Tax, Division- Bhavnagar-1.
5. Guard file