::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.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/15/EA2/BVR/2017	69/AC/STAX/DIV/2016-17	04.01.2017

ख अपील आदेश संख्या (Order-In-Appeal No.):

BHV-EXCUS-000-APP-226-2017-18

आदेश का दिनांक / Date of Order:	15.03.2018	जारी करने की तारीख / Date of issue:	23.03.2018

Passed by **Shri Gopi Nath, Additional Director General (Audit), Ahmedabad Zonal Unit, Ahmedabad.**

अधिसूचना संख्या २६/२०१७-के.उ.शु. (एन.टी.) दिनांक १७.१०.२०१७ के साथ पढ़े बोर्ड ऑफिस आदेश सं. ०५/२०१७-एस.टी. दिनांक १६.११.२०१७ के अनुसरण में, श्री गोपी नाथ, अपर महानिदेशक ऑडिट, अहमदाबाद जोनल यूनिट को वित्त अधिनियम १९९४ की धारा८५, केंद्रीय उत्पाद शुल्क अधिनियम १९४४ की धारा ३५ के अंतर्गत दर्ज की गई अपीलों 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 17.10.217 read with Board's Order No. 05/2017-ST dated 16.11.2017, Shri Gopi Nath, Additional Director General of Audit, Ahmedabad Zonal Unit, 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** :-

1.M/s G.N. Ship Breakers, Plot No. 127, Ship Breaking Yard, Alang - Sosiya Bhavnagar.

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:-

(i) 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.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- ३८००१६ 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 क्रमश: 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 सार्वजिनक 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 आधिनेयम, 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 क्रमश: 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 सार्वजिनक 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 प्रतियां 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.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों 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 में 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, बशर्ते 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

(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवैट जमा की ली गई गलत राशि
(iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्ते 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 होंगे।/

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 :

(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

- 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 मामलो मे, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, 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 मे, 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 मे या भंडारण मे माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह मे माल के नुकसान के मामले मे।/
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 मे प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले मे, 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 ड्यूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा सेमायाविधि पर या बाद मे पारित किए गए है।/
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 प्रतिया प्रपत्र संख्या EA-8 मे, जो की केन्द्रीय 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 प्रतिया संलग्न की जानी चाहिए। साथ ही केन्द्रीय 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 है 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 मे कई मूल आदेशो का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण 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, not withstanding 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) यथासशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट 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-I in terms of the Court Fee Act,1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 मे वर्णित एव अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमो 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 अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते है । /
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

ORDER-IN APPEAL

The Assistant Commissioner, Service Tax Division, Bhavnagar (hereinafter referred to as **"the appellant"**) authorized by the Principal Commissioner, Central Excise & Service Tax, Bhavnagar vide Review Order dated 10.03.2017 issued from F. No. V/2-208/Ref/RRA/2016-17 has filed an appeal against the Order-In-Original No. 69/AC/STAX/DIV/2016-17 dated 04.01.2017 (hereinafter referred to as the "impugned order") passed by the Assistant Commissioner, Service Tax Division, Bhavnagar (hereinafter referred to as the 'Adjudicating Authority").

2. Briefly stated the facts of the case are as under:-

(i) M/s G.N.Ship Breakers, Plot No.127, Ship Breaking Yard, Sosiya, Dist. Bhavnagar (hereinafter referred to as **"the respondent"** for sake of brevity) are having Central Excise Registration No. AACFG7195AXM001 and also Service Tax Registration No: AACFG7195AST001. During the course of Audit, it was noticed that **(a)** the respondent had collected the Transportation Charges totally amounting to Rs. 1,28,00,537/- from various consignees during the period from 2012-13 to 2014-15 and thus, the respondent had undertaken the responsibility to pay freight to the Goods Transport Agency (GTA) . As per Rule 2(1)|(d) (B) of the Service Tax Rules, 1994, the respondent, being the recipient of the services, was liable to pay service tax of Rs. 3,95,537/- on the freight charges paid by them to GTA as detailed at Table-Á' at Para-2(i) of the impugned order, under the category of "GTA services". (b) the respondent had made an expenditure of Rs. 53,000/- during the period from 2013-14 to 2014-15 in respect of services received under the category of "Legal Consultancy Services" on which service tax of Rs. 6,921/- as detailed at Table-'B' at Para-2(ii) of the impugned order, was required to be paid under Reverse Charge Mechanism. These facts culminated into issuance of Show Cause Notice dated 29.02.2016.

(ii) The Adjudicating Authority under the impugned order dropped the demand of Service Tax of Rs. 3,95,537/- under the category of "GTA services and consequently demand for interest and various penalties on above, were also dropped. However, appropriated the Service Tax of Rs. 6,921/- along with interest of Rs.321/- and ordered for waiver of penalty under Section 77(1) (a) of the Finance Act,1994 in respect of "Legal Consultancy Services".

3. Being aggrieved by the impugned order, the appellant duly authorized by the Principal Commissioner, Central Excise & Service Tax, Bhavnagar vide Review Order dated 10.03.2017 issued from F. No. V/2-208/Ref/RRA/2016-17, has filed an appeal against the impugned order wherein it is interalia contended as under:-

(i) The Adjudicating Authority has erred in holding, after relying on the invoices made available by the respondent during Adjudication Proceedings," that since the transportation cost has already been included in the Assessable value of the goods, the Transportation Cost has become the component of assessable value and as Central Excise Duty has already been paid on this amount, hence Service Tax can not be charged on this same amount as it will be Tax-on- Tax". This, finding of theAdjudicating Authority appears to be not sustainable as valuation under Central Excise Act,1994 read with Central Excise Valuation (Determination of Price of Excisable Goods) Rules,2000 is not relevant for charging of Service Tax under the Finance Act,1994.

(ii) The Service Tax on GTA service is required to be paid by the a person liable to pay service tax, as defined under Rule 2(1)|(d) (B) of the Service Tax Rules, 1994, according to which any person who pays or is liable to pay freight either himself or through his agent for transportation of such goods by road, is a person liable to pay the service tax under GTA. As per the invoices issued by the respondent, the freight has been shown separately, which clearly shows that respondent or his agent had paid the freight charges to GTA. Thus, respondent is a person liable to pay the service tax on the said freight charges.

(iii) The Adjudicating Authority has erred in holding, after relying on the Lorry Receipt issued by GTA and Consignment Sale Note issued by the Consignment Agent M/s Shree Nilkanth Mahadev Steel Inds., Mandi, Gobindgarh, Panjab that "After scrutiny of the document, it is evident that Transportation Cost has been borne by the consignee". This is misinterpretation of the provisions of Rule 2(1)|(d) (B) of the Service Tax Rules, 1994, according to which any person who pays or is liable to pay freight is supposed to pay the service tax under GTA. From the excise invoice and the copy of L.R., it is evident that the respondent /his agent has paid the freight charges. Further, from the Consignment Note issued by the agent of the respondent, it is evident that the agent of the respondent has deducted the freight charges as expenditure on sale of goods from the sale proceedings received from the buyers which meant that the Agent had recovered freight charges from the respondent and thus, the freight charges were borne by the respondent which had been paid to the GTA through their Agent.

(iv) The Adjudicating Authority has failed to call for and examine other financial records/documents of the respondent such as evidence of payment/considerations, Income Tax Returns, Audited Balance Sheets, P&F Accounts, 26AS Forms etc. before arriving at the conclusion that total amount of transportation charges were borne by the respective Consignment Sale Agents. In fact, the said freight charges were eventually borne by the respondent only and also paid by the respondent to the GTA.

4. The respondent vide letter dated 26.04.2017 received on 11.05.2017 filed Cross Objection on the grounds interalia mentioned as under:-

(i) The goods were sold out through Consignment Agent and hence, the transportation cost from the factory premises to the place of Consignment Agent, have been included in the Assessable Value in terms of the provisions of Section 4 of the Central Excise Act,1944 read with Central Excise Valuation (Determination of Price of Excisable Goods) Rules,2000 and then Central Excise duty on the said value has been paid by the respondent. Hence, demanding Service tax once again on the same amount of the said transportation cost is bad in law.

(ii) Incorporating the provisions of Rule 2(1)|(d) (B) of the Service Tax Rules, 1994 and demanding service tax under Section 68 of the Finance Act,1994 is not correct as both Central Excise duty and Service tax are indirect taxes and hence, the government can not levy two indirect taxes on the same amount i.e. Transportation Charges.

(iii) As the respondent has not provided any services in the present case since they had

simply transferred the excisable goods under cover of C.Ex. invoice to the place of Consignment Agent and unless & until sale is completed at the end of independent buyers, such expenses incurred are nothing but "in or in relation to manufacturing activities", hence, on the said value i.e. Transportation cost which is part of Assessable Value for excise purpose and accordingly excise duty is paid on it, the service tax can not be charged on it again.

(iv) The extended period can not be invoked as they have not deliberately suppressed the facts and the appellant was very much aware of the said facts and circumstances apart from the facts, no adverse is noticed and intimated by the appellant on all periodical returns filed by them. Further, appellant was well aware of the marketing pattern prevailing at the ship breaking yard at Alang/Sosiya and FAR in the present case issued on 05.05.2014 whereas SCN issued on 29.02..2016, after a more than one and half year from the date of the disclosure of the omission. Reliance is placed on the decisions of the higher judicial forum in support of the said contention.

5. Hearing in the case was granted on 08.03.2018 wherein Shri N.K.Maru, Consultant on behalf of the respondent appeared and reiterated the submission of the Cross Objection and also furnished copy of Valuation Rules, 2000 along with copies of two OIAs issued by Commissioner (Appeals) Rajkot in similar cases, for consideration.

6. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, and Cross Objection filed and oral submissions made by the respondent at the time of hearing. The issue for decision before me is whether or not under the impugned order, the Adjudicating Authority has correctly dropped the demand of service tax of Rs. 3,95,537/- under the category of "GTA services with consequent demand for interest and proposal for various penalties on it. The appellant has strongly contended as interalia mentioned at para-3 above. The respondent has also under Cross Objection put their contention as interalia mentioned at para-4 above. I take up the appeal for final decision.

7. On the issue of service tax of Rs. 3,95,537/- under the category of "GTA Services", I find that the respondent in Cross Objection has contended that since the goods were sold out through Consignment Agent and hence, the transportation cost from the factory premises to the place of Consignment Agent, have been included in the Assessable value in terms of the provisions of Section 4 of the Central Excise Act,1944 read with Central Excise Valuation (Determination of Price of Excisable Goods) Rules,2000 and then Central Excise duty on the said value has been paid by the respondent, demanding Service tax once again on the same amount of the said transportation cost is bad in law. I find that the Adjudicating Authority has also held the same view as mentioned at Para-5.6 of the impugned order.

7.1 However, I do not agree with the said contention of the respondent and the findings of the Adjudicating Authority that "since the transportation cost has already been included in the Assessable value of the goods, the Transportation Cost has become the component of assessable value and as central Excise Duty has already been paid on this amount, hence Service Tax can not be charged on this same amount as it will be Tax-on- tax". I find that the inclusion of value or cost of transportation in respect of the transportation of the goods from the factory premises to the place of Consignment Agent, in the

Assessable Value is governed under the provisions of Section 4 of the Central Excise Act, 1944 read with Central Excise Valuation (Determination of Price of Excisable Goods) Rules,2000, the relevant portion thereto is reproduced as under for ease of reference.

> **[RULE 5.**Where any excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of section 4 of the Act except the circumstances in which the excisable goods are sold for delivery at a place other than the place of removal, then the value of such excisable goods shall be deemed to be the transaction value, excluding the cost of transportation from the place of removal upto the place of delivery of such excisable goods.
>
> ***Explanation 1.*** - ....
>
> ***Explanation 2.*** - For removal of doubts, it is clarified that the cost of transportation from the factory to the place of removal, where the factory is not the place of removal, shall not be excluded for the purposes of determining the value of the excisable goods.]

From plain reading of the above provisions, it is crystal clear that the cost of transportation from the factory to the place of removal, where the factory is not the place of removal, shall not be excluded for the purposes of determining the value of the excisable goods. There is no dispute in the case before me that the goods have been sold through the consignment agents and sale has not taken place at the factory gate. Hence, as per the said provisions, the said cost of transportation has been included in the assessable value on which excise duty have been paid by the respondent. However, the compliance of these provisions does not mean that the respondent has been excluded from payment of service tax under the Finance Act, 1994. Both taxes/duty are being levied on separate analogy wherein the excise duty is collected on the point of manufacture and the service tax is levied on the point of provisions of taxable services and accordingly both are governed under separate set of provisions of Acts and Rules. So, I hold that the observation of the Adjudicating Authority that "since the transportation cost has already been included in the Assessable value of the goods, the Transportation Cost has become the component of assessable value and as central Excise Duty has already been paid on this amount, hence Service Tax can not be charged on this same amount as it will be Tax-on- tax" is not legally sustainable.

7.1.1 Further, I find that the Service tax on GTA service is required to be paid by the a person liable to pay service tax, as defined under Rule 2(1)(d) (B) of the Service Tax Rules, 1994, the relevant portion thereto is reproduced for ease of reference.

> "[(d) "person liable for paying service tax", -
>
> (i)...
>
> (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 plain reading of the above provisions, it is crystal clear that any person who pays or is liable to pay freight either himself or through his agent for transportation of such goods by road, is a person liable to pay the service tax under GTA. Thus, in view of these provisions, I hold that in the present case, service tax on the transportation cost incurred for transporting the goods from the factory premises to place of consignments agent, is required to be levied irrespective of the facts whether central excise duty has been paid on that amount or not.

7.1.2 Now, issue to be decided whether the transportation charges from the factory premises to the place of Consignment Agent have been paid by the respondent/ his Agent or by the consignee is to be examined. I find that the Adjudicating Authority at para-5.6 of the impugned order has after relying on the Consignment Sale Note No. 79 issued by the Consignment Agent M/s S.S. Traders, Ludhiana in relation to Invoice No. EX 1166 dated 27.12.2012 with corresponding L.R. No. 1288 dated 27.12.2012 and also after relying on the Consignment Sale Note issued by M/s Shree Nilkanth Mahadev Steel Inds, Mandi, Gobindgarh in relation to Invoice No. EX 1271 dated 20.02.2013, has held that the transportation cost of Rs. 44,145/- and Rs.18,675/- have been borne by the consignee. However, the appellant has strongly contended on this as detailed at para-3 (iii) above. Hence, I refer to the said documents made available by the respondent with their Cross Objection. From Invoice No. EX 1271 dated 20.02.2013 and Invoice No. EX 1166 dated 27.12.2012 issued by the respondent , it transpires that the transportation cost of Rs. 18,675/- and Rs. 44,145/- have been shown alongwith the name of the Consignees as M/s Shree Nilkanth Mahadev Steel Inds, Mandi, Gobindgarh and M/s S.S. Traders, Ludhiana respectively. However, I find that these two M/s Shree Nilkanth Mahadev Steel Inds, Mandi, Gobindgarh and M/s S.S. Traders, Ludhiana are the Consignment Agents of the respondent and the said transportation cost of Rs. 18,675/- and Rs. 44,145/- have been found to be deducted by the said two Consignment Agents in their Consignment Sale Memo -- (no number found) in respect M/s Shree Nilkanth Mahadev Steel Inds, Mandi, Gobindgarh) and Consignment Sale Note No.79 of M/s S.S. Traders, Ludhiana which clearly show that these two Consignment Agents have deducted and thus recovered the said transportation charges from the sale proceedings in respect of the consignment cleared under the Invoice No. EX 1271 dated 20.02.2013 and Invoice No. EX 1166 dated 27.12.2012 issued by the respondent. Further, the above provisions very categorically provides that " **person who pays or is liable to pay freight either himself or through his agent**". Thus, it proves that the transportation charge was not paid by the consignee but the same was paid and borne by the respondent only and thus, I hold that the respondent was person liable to pay service tax under GTA services in pursuance to the provisions of Rule 2(1)|(d) (B) of the Service Tax Rules, 1994.

7.2 Further, reliance on the Order-In-Appeals dated 12.09.2017 and Order-In-Appeals

dated 15.12.2016 issued by Commissioner (Appeals), Rajkot which have been produced by the respondent during hearing before me, are of no help to them as the issues involved in those cases were of availment of cenvat credit of service tax paid by their consignment agent on the transportation charges from the factory premises to the premises of consignment agent whereas in the present case the issue is of non- payment of service tax on the said transportation charges by the respondent.

7.3 In view of the facts and discussion herein above, I hold that in the present case the respondent was liable to pay service tax of Rs.3,95,537/- under the category of "GTA Services, being the person liable to pay service tax, as defined under Rule 2(1)|(d) (B) of the Service Tax Rules, 1994 along with interest thereon.

8. On the issue of limitation, I find that the respondent has in the cross objection contended as interalia mentioned at para-4 (iv) above. I do not find force in it. I find that being holder of Service Tax Registration as well as the Central Excise Registration, the respondent was very much conversant with the provisions and procedures with regard to the Service Tax and hence, it was open to the respondent to approach the department for any clarification in case of any confusion or any problem in interpretation of issue of levy of service tax in the present case. I find that no such efforts were put by the appellant. Further, I find that non- payment of service tax under GTA was due to willful suppression of the material facts by the respondent to the department by not showing the taxable value in the ST-3 Returns which was detected by the department when their records were verified during Audit by the department. Had the department not unearth the same during conducting of audit, it would have gone unassessed. Thus, there was clear cut willful suppression of material facts with intent to evade the service tax. In view of these facts, reliance placed on the decisions of the higher judicial forum in support of the said contention, is of no help to the respondent. Hence, I hold that the extended period in the present case is very much invokable and consequently, I hold that the respondent is also liable to the penalty under Section 78 of the Finance Act,1994.

9. Further, with regard to penalty under Section 77(2) of the Finance Act,1994, I find that as per Section 68 of the Finance Act, 1994 read with Rule-6 of the Service Tax Rules, 1994, the respondent had failed to pay service tax on GTA services within such time and in such manner and thus, thereby contravened the provisions of Section 68 of the Finance Act,1994 read with Rule-6 of the Service Tax Rules, 1994. Further, I find that as per Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, the respondent has failed to assess himself the tax due on the said GTA services and to furnish a return in such form and in such manner and at such frequency as prescribed, and thus, violated the said provisions of Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules,1994 for which I find that the respondent is liable to late fee.

10. In view of the facts and discussion herein foregoing paras, the appeal filed by the appellant (Revenue) and the cross objection by the respondent in the present case are disposed off in above terms and accordingly I pass the following order.

(i) I order to recover Service Tax including Education Cess and Secondary & Higher Education Cess, totally amounting to Rs.3,95,537/- (Rs. Three Lakhs Ninety Five Thousand, Five Hundred and Thirty Seven) under the category of "GTA Services, from the respondent M/s G.N.Ship Breakers, Plot No.127, Ship Breaking Yard, Sosiya , Dist. Bhavnagar, not paid by them during the period from 2012-13 to 2014-15 under the provisions of Section 73 (2) of the Finance Act, 1994 by invoking extended period.

(ii) I order to recover Interest from the respondent at appropriate rate, from the due date of payment of service tax to the actual payment of amount of service tax as mentioned at (i) above under the provisions of Section 75 of the Finance Act,1994.

(iii) I order the respondent for payment of late fee of Rs. 20,000/-(Twenty Thousand) per return for their failure to assess the tax due on the services provided by them and for delayed filing of /for failure on the part of the respondent to file the prescribed ST-3 returns properly in respect of the said GTA services in time during the period involved in the present case, in terms of the provisions of Section 70 of the Finance Act,1994 read with Rule -7 of the Service Tax Rules, 1994.

(iv) I impose penalty of Rs.3,95,537/-(Rs. Three Lakhs Ninety Five Thousand, Five Hundred and Thirty Seven) under Section 78 (1) of the Finance Act,1994 on the respondent. However, if the amount of Service Tax including Cesses, totally amounting to Rs.3,95,537/- as determined at (i) above alongwith interest payable, is paid by them within 30 days of the date of receipt of this order, then as per the proviso to Section 78 (1) ibid, the penalty shall be 25% of the Service Tax determined and ordered at Para (i) above. The benefit of the reduced penalty shall be available only if the amount of such reduced penalty has also been paid within 30 days from the receipt of this order.

(Gopi Nath)
Commissioner (Appeals)/
Additional Director General (Audit)

BY R.P.A.D.

To,

1. The Assistant Commissioner, CGST Division, (Previously-Service Tax Division), Bhavnagar.

2. M/s G.N.Ship Breakers, Plot No.127, Ship Breaking Yard, Sosiya , Dist. Bhavnagar

Copy To:-

1. The Chief Commissioner, CGST, Ahmedabad Zone, Ahmedabad.
2. The Principal Commissioner, CGST, Bhavnagar.
3. The Commissioner (Appeals), Rajkot.
4. The Assistant Commissioner, CGST, System -Ahmedabad
5. Guard File.
6. P.A. File.