



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

द्वितीय तल, जी एस टी भवन / 2<sup>nd</sup> Floor, GST Bhawan,

रेस कोर्स रिंग रोड, Race Course Ring Road,

राजकोट / Rajkot - 360 001

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सत्यमेव जयते

**रजिस्टर्ड डाक ए. डी. द्वारा :-**

क	अपील / काइन संख्या / Appeal / File No.	मूल आदेश नं / OIO No.	दिनांक / Date
	V2/42/GDM/2016	36/JC/2015	15.03.2016

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

**KCH-EXCUS-000-APP-012-2017-18**

आदेश का दिनांक /  
Date of Order: **16.08.2017**

जारी करने की तारीख /  
Date of issue: **18.08.2017**

**कुमार संतोष, आयुक्त (अपील), राजकोट द्वारा पारित /  
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot**

ग) उपर आदेश/आदेश संख्या/अपील संख्या/अपील संख्या/केन्द्रीय उत्पाद शुल्क सेवाकर, राजकोट / जामनगर / गांधीधाम/द्वारा उपरोक्तित जारी मूल आदेश से मुक्ति /  
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 Appellant & Respondent :-**  
**M/s. Shree Radhey Shipping Co., Office Ni. 212/213, Sunder Park Shakti Nagar Mundra District- Kutch,**

इस आदेश(अपील) से उपरिष्ठ कोई व्यक्ति निम्नलिखित तरीके से उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दाखल 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 अपील विभागाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अन्तर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अन्तर्गत 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) विशेषण मूल्यांकन से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील विभागाधिकरण की विशेष पीठ, ईस्ट ब्लॉक नं 2, अर. 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 बयान गए अपील के अलावा बीच सभी अपील सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील विभागाधिकरण (सिस्टट) की पश्चिम क्षेत्रीय पीठ, द्वितीय तल, बहामती भवन असाबा अहमदाबाद को की जानी चाहिए।  
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhaumati Bhawan, Asarwa Ahmedabad in case of appeals other than as mentioned in para- 1(a) above.

(iii) अपील विभागाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001 के नियम 6 के अन्तर्गत निर्धारित फिल नंबर एए-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की राशि, अपील की राशि और ब्याज राशि (अर्थात्, अपील 5 लाख या उससे कम, 5 लाख रुपया या 50 लाख रुपया तक अथवा 50 लाख रुपया से अधिक है तो कम से कम 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भ्रष्टाचार, संबंधित अपील विभागाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का अन्ततः, बैंक को उस शाखा में होना चाहिए जहां संबंधित अपील विभागाधिकरण की शाखा स्थित है। अथवा अपील (स्टे ऑर्डर) के लिए आवंटन-पर के साथ 500/- रुपया 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) अपील विभागाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अन्तर्गत सेवाकर विभागाधिकरण, 1994 के नियम 9(1) के तहत निर्धारित धारा 5.7-5 में बयान प्रतियों में की जा सकती है और उसके साथ जिस आदेश के विरुद्ध अपील की गयी है, 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 राशि, अपील की राशि और ब्याज राशि (अर्थात्, अपील 5 लाख या उससे कम, 5 लाख रुपया या 50 लाख रुपया तक अथवा 50 लाख रुपया से अधिक है तो कम से कम 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भ्रष्टाचार, संबंधित अपील विभागाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का अन्ततः, बैंक को उस शाखा में होना चाहिए जहां संबंधित अपील विभागाधिकरण की शाखा स्थित है। अथवा अपील (स्टे ऑर्डर) के लिए आवंटन-पर के साथ 500/- रुपया 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 5.7.5 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 fee 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) विल अपीलियम, 1994 की धारा 88 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर निवसधारी, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित फॉर्म ST-7 में की जा सकती एवं उसके साथ अनुपम, केन्द्रीय उत्पाद शुल्क अथवा अनुपम (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न की (उपरोक्त में एक प्रति प्रस्तुत होनी चाहिए) और अनुपम द्वारा संलग्न अनुपम अथवा अनुपम, केन्द्रीय उत्पाद शुल्क सेवाकर, को अपीलियम न्यायाधिकरण को अपील दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होती है। / The appeal under sub section (2) and (2A) of the section 88 the Finance Act 1994, shall be filed in Form 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 अपीलियम प्राधिकरण (सेस्टैट) के प्रति अपील के अंतर्गत में केन्द्रीय उत्पाद शुल्क अपीलियम 1994 की धारा 35एक के अंतर्गत, जो की वित्तीय अपीलियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलियम प्राधिकरण में अपील करते समय उत्पाद शुल्क सेवा कर साथ के 10 प्रतिशत (10%), जब मात्र एवं जुमाना विवादित है, या जुमाना, जब केवल जुमाना विवादित है, का भुगतान किया जाय, इसी कि इस धारा के अंतर्गत जमा कि जाने वाली अपीलियम टैक्स टैक्स टैक्स टैक्स टैक्स टैक्स टैक्स में अधिक न हो। / केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत 'आय विंग टैक्स शुल्क' में प्रिजब कलियम है

- (i) धारा 11 डी के अंतर्गत रकम
- (ii) सेल्वेट जमा की गयी गयी गयी गयी
- (iii) सेल्वेट जमा निवसधारी के नियम 8 के अंतर्गत टैक्स रकम

- इसी कि इस धारा के प्राधान्य वित्तीय (स- 2) अपीलियम 2014 के अंतर्गत में पूर्व किसी अपीलियम प्राधिकारी के प्रत्येक विवादित प्रकरण अर्थात् एवं अपील को लागू नहीं होगी। /

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.

**भारत सरकार को पुनरीक्षण आवेदन :**

(C) **Revision application to Government of India:**  
इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अपीलियम, 1994 की धारा 35EE के प्राधान्य धारा के अंतर्गत अथवा अपील, भारत सरकार, पुनरीक्षण आवेदन इकाई, विल सचालन, राजस्व विभाग, चौकी स्टेशन, जौहर टॉप अवन, अवंत गार्, नई दिल्ली-110001, को किया जाय 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 मात्र के किसी नुकसान के कारण में, जहां नुकसान किसी मात्र को किसी कारखाने से भंडार गृह के परामर्श के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह परामर्श के दौरान, या किसी भंडार गृह में या अंतरण में मात्र के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में मात्र के नुकसान के कारण 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 मात्र के विनिर्माण में प्रयुक्त किये गए या अथवा गये केन्द्रीय उत्पाद शुल्क के छुट (रिबैट) 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 an 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 मात्र 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 इकाई केन्द्र इस अपीलियम एवं इसके विभिन्न प्राधान्यों के तहत मान्य की गई है और ऐसे आदेश जो अनुपम (अपील) के द्वारा विल अपीलियम (स- 2), 1998 की धारा 105 के द्वारा निर्यात की गई तारीख अथवा समायाचिका 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 फॉर्म संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) निवसधारी, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संशोधन के 3 मास के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अपीलियम, 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 से ज़्यादा कम है तो रुपये 200/- का भुगतान किया जाय और यदि संलग्न रकम एक लाख रुपये से ज़्यादा हो तो रुपये 1000/- का भुगतान किया जाय। / The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved is 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 दाय में किया जाना चाहिए। इस तथ्य के होते हुए भी की निम्न चर्ची रूप में बचने के लिए क्याचित अपीलियम न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाय 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 filed to avoid scriptoria work if existing Rs. 1 lakh fee of Rs. 100/- for each.

(E) पचासशेषित न्यायालय शुल्क अपीलियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं संशोधन आदेश की प्रति पर निर्धारित 8.50 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. 8.50 as prescribed under Schedule-1 in terms of the Court Fee Act,1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलियम न्यायाधिकरण (कार्य विधि) निवसधारी, 1982 में तर्जित एवं अन्य संबंधित मामलों को सम्बन्धित करते वाले विधियों की और भी ध्यान अवगत किया जाय 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 अपीलियम प्राधिकारी को अपील दर्जित करने में सम्बंधित न्यायक, विस्तृत और नवीनतम प्राधान्यों के लिए, अपीलियम विभागीय वेबसाइट [www.cbec.gov.in](http://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](http://www.cbec.gov.in).

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**:: ORDER-IN-APPEAL ::**

M/s. Shree Radhey Shipping Co., office no. 212/213, Sunder Park, 1<sup>st</sup> Floor, Plot No. 95, Tagore Road, Gandhidham, Kutch (*hereinafter referred to as "the appellant"*) has filed the present appeal against the Order-in-Original No. 36/JC/2015 dated 15.03.2016 (*hereinafter referred to as 'the impugned order'*) passed by the Joint Commissioner, Central Excise & Service Tax, Gandhidham (*hereinafter referred to as 'the adjudicating authority'*).

2. Facts of the case are that the appellant is a partnership firm engaged in providing Cargo Handling Services, Clearing & Forwarding Agent Services, Goods Transport Agency Services & Port Services, having Service Tax Registration no. AARFS7174GST001. During the course of audit, it was noticed that the appellant had shown income of Rs. 53,64,947/- (Rs. 6,78,588/- for F.Y 2009-10 & Rs. 46,86,359/- for F.Y. 2010-11(upto Jan-2011)) in books of accounts as '**Dispatch Money**' which was received from the service receiver M/s Indian Farmers Fertilizers Co. Op. Ltd. (for brevity 'IFFCO'). However, no service tax was paid on the said amount on the ground that the income was rewards to them for early dispatch of cargo and no service tax was payable by them since the same was not for the services provided by the appellant. Show Cause Notice dated 23.09.2014 was issued to the appellant proposing demand of service tax of Rs. 5,52,590/- on the said income treating the said income as consideration towards the services provided by the appellant i.e. "Cargo Handling Services" as defined under Section 65(23) of the Finance Act, 1994. The adjudicating authority vide impugned order confirmed demand of Service Tax of Rs. 5,52,590/- on the said income of 'Dispatch Money' under section 73(1) of the Finance Act, 1994 (*hereinafter referred as "Act"*), ordered payment of interest under section 75 of the Act and also imposed penalty under Section 77 and Section 78 of the Act.

3. Being aggrieved by the impugned order, the appellant preferred the present appeal on the grounds as under:-

- (i) The adjudicating authority failed to appreciate that they have paid Service Tax on amount received for cargo handling services; that apart from that amount the appellant also received an extra amount for efficient and faster turnaround of vessels as an incentive which was shown as dispatch money. This incentive 'dispatch money' was actually paid by the ship owner to the charterers as per the charter party agreement and the charterer in turn shared 50% thereof with the appellant.

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Such dispatch money is extra reward received for unloading the goods quickly from shipping company to IFFCO and is not liable for service tax under the "Cargo Handling Service". This argument is supported by the CBEC circulars and decisions of Tribunal.

- (ii) Invocation of extended period of limitation was not justified on the ground that the receipt of dispatch money was available in their Books of Accounts and hence there was no willful misstatement or suppression of facts on their part even if audit party came to know this facts from their books of accounts.
- (iii) It is settled position under law that where assessee had furnished all details whenever called upon to do so, sweeping allegation of suppression of facts without specification of material particulars cannot lead to invocation of extended period. Mere failure to disclose a transaction which is not required to be disclosed and pay tax thereon is not sufficient for invocation of extended period; that there has to be a positive, conscious and deliberate action intended to evade tax. They relied upon decision of Hon'ble Calcutta High Court Judgment in case of Infinity Infotech Parks Ltd reported as 35 STR 37.
- (iv) They are eligible for cum tax benefit as per provisions of Section 67(2) since the amount of dispatch money is gross amount received and the same has to be treated as inclusive of service tax for the purpose of calculating service tax.
- (v) No penalty can be imposed under section 77 and 78 of the Act in the given facts of the case.

4. Shri Janmesh Bharvada, Chartered Accountant in personal hearing on behalf of the Appellant and reiterated grounds of appeal and emphasized that dispatch money is not consideration for paying service tax as has already held by the Hon'ble High Court of Kolkota that it is an incentive; that it was their bonafide belief that service tax is not payable, hence, they did not pay service tax on this amount; that non-payment cant be treated as suppression; that extended period is not invokable in the present case. He also submitted that penalty under section 77 and 78 is not imposable in view of the settled position of law and referred to the case laws given by them in their written submission.

5. The appellant in their written submission filed during the personal hearing submitted copy of work order No. PO/ KND/ RU/ O/ S-1/20091672 dated 16/12/2009 of M/s. IFFCO and made further submissions as under:-



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(i) The dispatch money is/was paid by the ship owner to the charterer's (i.e. IFFCO & SSOEPL) as per agreements with them, purely as incentive for completion of the work prior to the specified time and faster turnaround of the vessels which in turn has been shared 50% with the appellant. This was not a consideration for Cargo Handling Services paid by the customers of the appellant; that it was a reward/incentive by Ship owners for quicker dispatch of cargo and therefore, not exigible to service tax.

(ii) They referred their detailed submissions made vide their letter dated 28.01.2015 and dated 07.03.2016 during the adjudication proceedings; that there was no explicit provision that the service tax is payable even on dispatch money; that as per definition of provided in Advanced Law Lexicon, the 'dispatch money' is opposite of 'demurrage'; that no explicit provision is there to charge service tax on either demurrage or dispatch money;

(iii) The nature of demurrage is akin to detention charges and CBEC by Circular dated 26.04.2010 clarified that no service tax is chargeable on detention charges. This rational and analogy was also applicable in case of demurrage and dispatch money. They also referred Hon'ble CESTAT, Bangalore's decision in the case of Karnataka State Beverages Corp Ltd reported at 11 STT 363. They further relied upon decisions in the case of M/s. AMR India Ltd (71 taxmann.com 175) M/s. AKQA Media India P Ltd (69 taxmann.com 390) ,

(iv) There was no suppression of facts on their part and they relied on the decisions in the cases of M/s. Infinity Infotech Parks Ltd ( 29 Taxmann.com 26), M/s. Simplex Infrastructures Ltd (69 Taxmann.com 97), M/s. Mundra Port & Special Economic Zone Ltd (15 Taxmann.com 33), M/s. Steel Cast Ltd (21 STR 500), Niranjan Lal Agarwal (34 STT 424) and M/s. Gandhadhar Bulk Movers (P) Ltd (34(STT 432) in this regard.

(v) Penalty under section 77 and 78 contested on the ground of their bonafide belief and referred various decisions of the Hon'ble High Courts/ CESTAT.

**Findings:-**

6. I have carefully gone through the facts of the case, the impugned order and submissions made by the appellant in grounds of appeal as well as written submission & during the course of personal hearing. The issue involved is whether the appellant is liable to pay service tax on the income earned by them as "Dispatch Money" or otherwise.

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7. I find that the adjudicating authority has confirmed the demand considering dispatch money received by the appellant from Shipping Agency through IFFCO as consideration towards "cargo handling services" provided by the appellant and treating it as part of "gross value charged" in terms of Section 67 of the Act. The appellant contended that the "dispatch money" is not a consideration for the service but an incentive convey from Shipping Agency to the customer of the appellant who shares it 50%. In this back drop, it would be appropriate to consider the terms of contract between the appellant and their customer to whom Cargo Handling Service is being provided by the appellant, namely IFFCO. two parties. I find that the work order no. PO/KND/RU/O/S-1/20091672 dated 16.12.2009 issued by M/s. IFFCO refers value of contract as Rs.4,72,50,000/- on 'LOT' basis for the quantity of 2,50,000/- MT  $\pm$  20% as detailed in the Schedule of Quantities to the work order. The work order specifies following work:-

*"Stevedoring, clearing, forwarding, Handling of Bulk Fertilizer Raw Materials under 10000 MTPD discharge rate at KPT, Kandla and Transporting the same to IFFCO plant site by dumpers from geared vessels as fully detailed in the Attachments I to V to the work order."*

7.1 Copy of the work order is reproduced below:-



**INDIAN FARMERS FERTILISER COOPERATIVE LTD, KANDLA (GUJ), GUJARAT, INDIA-370 210**  
 સુકાલિયા સમીક્ષા સંસ્થા સુકાલિયા સુકાલિયા સુકાલિયા

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**WORK ORDER**

Order No.: PO/KND/RU/O/S-1/20091672

Ship Name: KNDL 110

Ship No: 2009001

Order Value: 4,72,50,000

Shipper: SHREKADREY SHIPPING CO. 212/213, BUNDER PARK, 1ST FLOOR, FADORS, GANDHIDHAM 372291, GUJARAT

Consignee: IFFCO

Order Date: 16/12/2009

Order Value: 4,72,50,000

Order Type: Stevedoring, Clearing, Forwarding, Handling of Bulk Fertilizer Raw Materials under 10000 MTPD discharge rate at KPT, Kandla and Transporting the same to IFFCO plant site by dumpers from geared vessels as fully detailed in the Attachments I to V to the work order.

Sl. No.	Item Code / Description	Unit	Quantity	Rate	Amount
1	STEVEDORING, CLEARING, FORWARDING, HANDLING OF BULK FERTILIZER RAW MATERIALS (MOP, MAP & UREA) UNDER 10000 MTPD DISCHARGE RATE AT KPT, KANDLA AND TRANSPORTING THE SAME TO IFFCO PLANT SITE BY DUMPER FROM GEARED VESSELS AS FULLY DETAILED IN THE FOLLOWING ATTACHMENTS	LOT	1	4,72,50,000.00	4,72,50,000.00

Quantity: 2,50,000 MT  $\pm$  20%

Indian Rupees: Four Crores Seventy Two Lakh Fifty Thousand Only

*Handwritten signature/initials*

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G.S.T. TIN: 24060100123  
C.S.T. TIN: 24560100123  
E.C.C. No. AAAA10050MXM002



PHONES : (091-2836) 270539, 270639  
270381, 270382, 270641, 270696  
FAX (091-2836) 270658, 270642

इंडियन फार्मर्स फर्टिलाइजर कोऑपरेटिव लिमिटेड  
INDIAN FARMERS FERTILISER COOPERATIVE LTD. KANDLA (KUTCH), GUJARAT, INDIA-370 210  
www.iffco.co.in (BANKERS: INDIAN OVERSEAS BANK, OSLO, GANDHIDHAM-370201) [procurement@iffco.co.in](mailto:procurement@iffco.co.in)

### WORK ORDER

PUR/

Order No : PO/KND/RU/O/S-1/20091672/

Order Date : 16 DEC 20

DURATION : Two Years effective from the date of issue of LOI (24-10-2009) extendable for further period of three months unilaterally by IFFCO

PAYMENT : Weekly bills shall be raised for the quantity handled and transported during the week and payment for 50 percent of the certified billed quantity shall be made within seven days of submission of bills and the balance payment against a vessel shall be made within fifteen days after complete discharge of the cargo from the vessel and also transporting the same to IFFCO Kandla Plant Site.

Please ensure timely execution.

Note: Non-compliance of instructions attached may lead to rejection.  
All copies of WO must be returned duly signed and sealed as token of your acceptance within 10 days of receipt of order.  
PRICE REDUCTION: The pre-estimated mutually agreed damages pursuant thereto shall be payable @ 0.5% per week of delay or part thereof subject to maximum 5% of total order value.

for INDIAN FARMERS FERTILISER COOPERATIVE LTD

BY GENERAL MANAGER (MATERIALS)

#### Annexure(s):

- 1 SCHEDULE\_STEVDORING.XLS
- 2 Stevedoring\_Of\_Geared\_Vessels.doc

7.2 I find that Clause 5 of the General Terms and Conditions (Attachment I to the Work Order) refers Price Reduction Clause and Clause 21 of it refers "FIXED PRICE" condition. Further, clause 2.3.0 to 2.3.4 of the special terms and conditions for stevedoring (Attachment-II to the Work order) stipulates "ESCALATION AND OTHER CLAUSE" providing for price escalation due to Diesel Escalation. Thus, Work Order read with General Terms and Conditions and Special Terms & Conditions reveals that value of the services are fixed @Rs.4,72,50,000/- and no other consideration is agreed upon by the service receiver towards the main services to be provided by the Appellant.

7.3 Attachment III to the work order defines "SCOPE OF WORK". I find that clause 3.1.6 stipulates penalty at "the demurrage rate" of the vessel to be recovered by the service receiver from the appellant for not achieving stipulated 'daily discharge rate' and at the same time makes appellant entitled for payment of 50% of the 'dispatch money', if any. Copy of the relevant page is reproduced below:-

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will be after 12 hours from tendering of NOR (if completion of entire discharge of cargo from the ship. In case of delay in berthing of Govt. priority vessel also, the pre-berthing demurrage, if any, shall be to contractor's account.

- 3.1.6 In case daily average discharge rate as stipulated in clause 3.1.5 and 3.1.2 is not achieved by the contractor and the ship suffers demurrage, the penalty at the demurrage rate of the vessel shall be recovered from the contractor. But as long as the vessel is not under demurrage, the penalty for loss of despatch money to IFFCO shall be recovered from the contractor. The pre-berthing and post berthing delay / demurrage will be to the contractor's account in all the cases. Also if in case KPT pulls out the vessel for the reasons of poor discharge, all incidental charges and demurrage on the ship shall be recovered from the contractor. It shall be responsibility of the contractor, to ensure that maximum nos. of hooks available on ship are working to achieve maximum discharge rate. They have to maintain a daily record of nos. of hooks working to carry out discharge of FERTILISER RAW MATERIALS (MOP, MAP, & UREA). The contractor has to ensure proper working of ship's and shore cranes to achieve daily discharge rate of 10,000 MTPD or more. However the actual time saved in comparison to the min. discharge rates as mentioned under clause no. 3.1.5 and 3.1.2 as the case may be, will be paid to the contractor @ 50 % of the despatch money, if any. The vessel's future note will be provided to the contractor for the demurrage / despatch rates. But the charter party will not be provided by IFFCO in any case. The time allowed to the contractor will be the total of the time allowed for mid stream discharge and the time allowed at berth which have no relevance to the IFFCO's terms and conditions with the supplier.

Contractor shall be responsible to depute one representative at jetty / wharf / berthing meeting at KPT daily in the morning right from arrival of vessel till completion of discharge and sailing away. The representative shall come with all the details of operation to attend to the queries of KPT authorities and IFFCO.

The rate of transportation from wharf to IFFCO plant must be not less than 3500 MTPD, however this can vary depending upon IFFCO's requirement and rest of the material discharged from the ship may be shifted to KPT storage area which shall be transported to IFFCO later, so that there is no accumulation of material on wharf at any point of time and wharf can be handed over to KPT within the stipulated time of KPT. Any interruption to ship operation by KPT for not clearing wharf shall be to the account of the contractor. The cargo will be received in Hoppers and in the open plots inside Plant site. The cargo unloaded in the open plots is to be heaped by the contractor for which heaping charges are payable. The balance cargo may be shifted to storage area inside the KPT on daily basis during the discharging of the vessel at berth which is to be transported to IFFCO plant site immediately after completion of ship discharging. The KPT wharf is to be cleared within 08 hrs on vacating the berth by the vessel failing which penalty shall be levied @ Rs 400/- per hour or part thereof on pro rata basis.

The contractor shall arrange storage area inside KPT at his cost and the material stored in KPT storage area is to be delivered to IFFCO plant site within 07 ( seven ) days of completion of vessel discharge or as directed by IFFCO based on the site availability at Plant. Any demurrage on storage due to delay in delivery shall be on contractor's account only. Also it is the responsibility of the contractor to deliver what ever the material unloaded / discharged from the vessels to IFFCO plant site at Kandla without any delay.

- 3.1.7 If, in case, vessel is pulled out from berth by KPT, the contractor has to make all the arrangements, at his own cost, to unload the balance cargo from the ship at Inner Anchorage / OTB and no extra payment shall be made to the contractor, if the contractor fails to unload the balance cargo from a pulled out vessel at Inner Anchorage / OTB.

7.4 I find that the dispatch money for which appellant is entitled under the above clause is counter balance to the demurrage payable by the appellant. This amply establishes that the dispatch money is not part of the consideration towards the provision of cargo handling services by the appellant. Therefore, I find merit in the appellant's argument that "dispatch money" is akin to the "demurrage" and opposite of "demurrage". Thus, I am of the considered view that penalty on account of demurrage cant be deducted from the consideration for payment of service and similarly any incentive received from shipper in the form of dispatch money for early execution can not be added to the consideration to arrive at gross value for the purpose of payment of Service tax, considered as gross value charged.

7.4.1 It is established by above facts that "dispatch money" is paid by the Shipping Agency to the customer of the appellant as incentive for speeding up the execution dispatch of goods. The said amount is not related to the "cargo handling services" provided by the appellant. Entire work order is for specific



quantity of cargo to be handled by the appellant and the consideration of this quantity is not related in the work order with the dispatch money. Schedule of Quantities (Attachment V to the work order) detailing the various rate to arrive at entire contract value of Rs.4,72,50,000/- is reproduced below:-

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ATTACHMENT-V

STEVEDORING, CLEARING, FORWARDING, HANDLING OF FERTILISER RAW MATERIALS AT KANDLA PORT CARGO JETTY AND TRANSPORTATION THE SAME TO IFFCO PLANT SITE BY DUMPERS.

SCHEDULE OF QUANTITIES

S No	DESCRIPTION	QTY.(MT)	UNIT RATE		AMOUNT
			In Figure (Rs.)	In Words (Rupees)	
	<b>MATERIAL :BULK FERTILISER MATERIALS ( MOP / MAP/ / UREA )</b>				
1	Cleaning Charges consisting of services (excluding port charges, Customs Duty & Freight ) like obtaining delivery order from Steamer Agents, Customs Clearance, complying of bond in absence of documents, liaison with owners agent and port authorities.	2,50,000 + 20%	3.00	Three only	7,50,000/-
2	All inclusive rate for stevedoring of Shipments including tally and supervision on board, labour detention charges, wages of diggers on wharf. All types of surveyors remuneration etc. (excluding insurance surveyors). Port and customs overtime for clearance of cargo etc.	2,50,000	107.00	One Hundred Seven only	2,67,50,000/-
3	Charges for loading trucks / dumpers	2,50,000	15.00	Fifteen only	37,50,000/-
4	Agency Commission	2,50,000	Free	Free	FREE
5	Unloading in stream through barges A) From OTB B) From inner anchorage	50,000 25,000	Free Free	Free Free	FREE FREE
6	Transportation from KPT to our plant site & Unloading	2,50,000	44.00	Forty Four only	1,10,00,000/-
7	Cargo heaping for storage in open area in plant premises	1,25,000	2.00	Two only	2,50,000/-
8	Cargo shifting to storage area inside KPT	1,25,000	38.00	Thirty Eight only	47,50,000/-
9	Total from ( 1 ) to ( 8 )				4,72,50,000/-
	<b>IN WORDS :-FOUR CRORE SEVENTY TWO LAKH FIFTY THOUSAND ONLY</b>				

1. Port wharfage shall be payable extra at actuals to Kandla Port Trust as per Clause No. 2.4.2.

7.5 I find that the said work order spanning for the period of two years for different vessels implies that the work order is not related to any single vessel and therefore demurrage and dispatch money is to be looked into in totality of the entire execution of work as discussed in foregoing Paras. This eliminates argument that the amount in dispute is consideration towards the services in guise of 'dispatch money'. The amount received by the appellant and in dispute in this appeal is an incentive/reward for "speedy execution" of the

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cargo handling services and is not attributable to the consideration for providing of services. The amount of dispatch money, if any, is not known to the appellant or even to the customer of the appellant at the time of entering into the contract and while performing the cargo handling services. Considering this factual position, I am of considered view that the amount of 'dispatch money' received by the appellant will not form part of the consideration for cargo handling services in terms of Section 67 of the Act as it is not charged by the Appellant for the services being provided by them. My above views are supported by the Hon'ble CESTAT's decision in the case of M/s. AMR India Ltd reported as 2016(42) STR 329 (Tri-Bang), the relevant paragraphs of which are reproduced as below:-

*“7. As regards the second issue, we find that it is a part of the orders placed by M/s. Singareni on the assessee providing provisions for imposition of penalty or for grant of incentives dependent upon the use of the quantity of explosives and the diesel oil. The said bonus which stands paid to the appellants, dependent upon the conservative and efficient use of diesel and explosives, can by no stretch of imagination be held to be value of the services being provided by them. It is to encourage the service provider to use the oil and explosives in a conservative manner. In fact, such type of bonus being given by the service providers has been considered by the Tribunal in a number of cases. Tribunal in the case of Kerala Publicity Bureau v. CCE [2008 (9) S.T.R. 101 (Tri.-Bang.)] observed that the incentives given to the service providers in the form of discounts are not leviable to service tax inasmuch as the said amounts are not received by the assessee in relation to service provided to their clients. Similarly, in the case of CCE, Chandigarh v. Facinate Advertising & Marketing [2013 (31) S.T.R. 77 (Tri.-Del.)], it was held that the incentives received by the assessee for appreciating performance were not known at the time of providing services and the same was never a consideration received by the assessee so as to tax the same. Similarly in the case of Euro RSCG Advertising Ltd. v. CST, Bangalore [2007 (7) S.T.R. 277 (Tri.-Bang.)], it was held that incentives received from certain publications after they reached certain targets of advertising business are not connected with the services rendered to the clients.*

*8. In the present case also we find that the incentives given by M/s. Singareni are for appreciating the appellants performance in utilizing less quantum of oil and explosives. In fact the said incentives were not even known at the time of performance of the service and are always calculated subsequent to the completion of the service. As such it can be safely concluded that the same is more in the nature of a prize money for a good performance by the appellant and are in no way linked to the value of the services. As such we find no justification for including the same in the value of the services and to confirm service tax on the same.”*



**(Emphasis Supplied)**

7.6 Similar views have been expressed by the Hon'ble CESTAT in the cases of M/s. Khanna Polymers reported as 2017(47)STR 82 (Tri-All) and M/s.

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Tradex Polymers reported as 2014(34)STR 416. In the given facts of the present case as discussed above and by following the above decisions, I set aside the impugned order wherein demand of service tax on dispatch money is confirmed.

8. Since, the demand of service tax is not sustainable, the order for recovery of interest and imposition of penalty will not survive.

9. In view of the above facts, discussions and finding, I allow the appeal filed by the appellant.

१०. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है.

10. The appeal is disposed off in above terms.

  
(कुमार संतोष)  
आयुक्त (अपील्स)

By Speed post

To

M/s. Shree Radhey Shipping Co.  
Office No. 212/213,  
Sunder Park  
1<sup>st</sup> Floor, Plot No. 95,  
Tagore Road,  
Gandhidham.

मेसर्स श्री राधे शिपिंग कंपनी  
कार्यालय सं. २१२/२१३,  
सुंदर पार्क, प्रथम मंजिल,  
प्लॉट न. ९५, टागोर रोड  
गांधीधाम.

Copy to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone Ahmedabad.
- 2) The Commissioner, GST & Central Excise, Gandhidham (Kutch) Commissionerate, Gandhidham.
- 3) The Joint Commissioner, GST & Central Excise, Gandhidham(Kutch) Commissionerate, Gandhidham.
- 4) The Assistant Commissioner, GST & Central Excise Division, Gandhidham.
- 5) Guard File.

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9. In view of the above facts, discussions and finding, I allow the appeal filed by the appellant.

१०. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है.

10. The appeal is disposed off in above terms.

सत्यापित,

*(Handwritten Signature)*  
16/11/2016

(कुमार संतोष)

सिम्तेश रुपारेलिया, आयुक्त (अपील्स)

अधीक्षक (अपील)

By Speed post

To

M/s. Shree Radhey Shipping Co. Office No. 212/213, Sunder Park 1 <sup>st</sup> Floor, Plot No. 95, Tagore Road, Gandhidham.	मेसर्स श्री राधे शिपिंग कंपनी कार्यालय सं. २१२/२१३, सुंदर पार्क, प्रथम मंजिल, प्लॉट न. ९५, टागोर रोड गांधीधाम.
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**Copy to:**

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone Ahmedabad.
- 2) The Commissioner, GST & Central Excise, Gandhidham (Kutch) Commissionerate, Gandhidham.
- 3) The Joint Commissioner, GST & Central Excise, Gandhidham(Kutch) Commissionerate, Gandhidham.
- 4) The Assistant Commissioner, GST & Central Excise Division, Gandhidham.
- 5) Guard File.