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आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क: O/O THE COMMISSIONER (APPEALS), GST & CENTRAL 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 / OID No.	दिनांक / Date
	V2/2/GDM/2017	12/ST/AC/2016-17	08.12.2016

6354 706356

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

KCH-EXCUS-000-APP-112-2017-18

आदेश का दिनांक / Date of Order:	05.12.2017	जारी करने की तारीख / Date of issue:	06.12.2017
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कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by **Shri Kumar Santosh**, Commissioner (Appeals), Rajkot

ग अगर आयुक्त संयुक्त आयुक्त उपायुक्त सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क सेवाकर, राजकोट / जयनगर / गान्धिधाम, द्वारा उपरलिखित जारी मूल आदेश में सूचित /
Arising out of above mentioned OID 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. Act Infraport Ltd.,Plot No. 391/392, Sector 1A,Near Mamlatdars Office,Gandhidham - Kutch - 370 201

इस आदेश(अपील) से स्वीकृत किये व्यक्ति निम्नलिखित तरीके में उपयुक्त अधिकारी / अधिकरण के समक्ष अपील दाखल कर सकते हैं।
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 अधीनस्थ न्यायाधिकरण 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 न्यायाकर से सम्बन्धित सभी प्रकार के शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अधीनस्थ न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, अरवा, के. पुरम, नई दिल्ली, को भी जारी 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 पैराग्रेफ (i) में बतलाए गए अपील के अलावा एक सभी अपील सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अधीनस्थ न्यायाधिकरण (विस्टेट) की पश्चिम क्षेत्रीय पीठ, द्वितीय तल, बटमारी भवन असावा अहमदाबाद-380016 को भी जारी चाहिए। /

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

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) विनियम, 2001, के नियम 6 के अन्तर्गत निर्धारित फॉर्म ए.ए.3 की धारा पहिली में दर्जे किये जाने चाहिए। इसमें से क्या है, क्या एक प्रति के साथ, जहां उत्पाद शुल्क की सीमा उत्पाद की सीमा और न्याया संयुक्त न्याया, रूप 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए का निर्धारित जमा शुल्क की प्रति जमा करना। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक बैंक के बैंक द्वारा जारी रेकॉर्ड 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। स्थान आदेश (स्ट. आदेश) के लिए असेट-पर 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/-

(iv) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अन्तर्गत सेवाकर विनियम, 1994 के नियम 9(1) के तहत निर्धारित फॉर्म S.T-5 में धार प्रथम में की जा सकती है। इसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न की जायेगी (जहाँ से एक प्रति प्रमाणित होनी चाहिए) और इसमें से क्या है, क्या एक प्रति के साथ, जहां सेवाकर की सीमा, उत्पाद की सीमा और न्याया संयुक्त न्याया, रूप 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए का निर्धारित जमा शुल्क की प्रति जमा करना। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक बैंक के बैंक द्वारा जारी रेकॉर्ड 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। स्थान आदेश (स्ट. आदेश) के लिए असेट-पर 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/-

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:: ORDER-IN-APPEAL ::

M/s. ACT Inraport Ltd., Plot No. 391 & 392, Sector 1/A, Near Mamlatdar Office, Gandhidham, Dist.: Kutch-370201 (hereinafter referred to as 'the appellant') has filed present appeal against Order-In-Original No. 12/ST/AC/2016-17 dated 08.12.2016 (hereinafter referred to as 'the impugned order'), passed by the Assistant Commissioner, Service Tax Division, Gandhidham (hereinafter referred to as "the lower adjudicating authority").

2. Brief facts of case are that appellant, holding Service Tax Registration No. AAECA9098HST003, in Form-2 under category of "Customs House Agent", "Steamer Agent", "Cargo Handling Agent" and "Port Services" undertook to comply with the conditions prescribed in Service Tax Rules, 1994 (hereinafter referred to as "the Rules"). Audit revealed that appellant had provided services from their Branch office at Delhi and Cochin but short paid Service Tax under the category of Customs House Agent Services as there is different in value shown in ST-3 returns for the period from April, 2012 to March, 2013 and income as per Profit and Loss Account. As per ST-3 returns, the value is Rs. 36,13,18,568/- whereas the income as per Profit and Loss Account is Rs. 36,16,42,000/- having differential value of Rs. 3,23,432/- on which no Service Tax was paid. Therefore, it was alleged that the appellant was liable to pay Service Tax of Rs. 39,976/- on this differential value under Customs House Agent Services.

2.1 Audit also revealed that appellant has short paid Service Tax under the category of Steamer Agent Services as there is different in value shown in ST-3 returns for the period from April, 2012 to March, 2013 and income as per Profit and Loss Account. As per ST-3 returns, the value is Rs. 1,78,39,367/- whereas the income as per Profit and Loss Account is Rs. 1,79,48,000/- having differential value of Rs. 1,08,633/- on which no Service Tax was paid. Therefore, the appellant was liable to pay Service Tax of Rs. 13,430/- on this differential value under Steamer Agent Services.

2.2 The jurisdictional Range Superintendent asked the appellant to provide service value/amount for the period 2013-14 & 2014-15 and the same was submitted by them vide letter dated 19.02.2016. The documents revealed that there was no Service Tax liability in Customs House Agency Services for the year 2013-14 & 2014-15. However, the appellant had short paid Service Tax of Rs. 650/- under Steamer Agent Service for the year


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2014-15.

2.3 The above observations culminated into issuance of Show Cause Notice No. IV/15-73/ST/ADJ/2015-16 dated 29.02.2016, which demanded Service Tax of Rs. 54,056/- (Rs. 39,976/- + Rs. 13,430/- + Rs. 650/-) under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as "the Act") alongwith interest under Section 75 of the Act. It was also proposed to impose penalties under Section 76, 77 and 78 of the Act upon the appellant.

2.4 The said show cause notice was adjudicated by the lower adjudicating authority, who confirmed demand of Service Tax of Rs. 53,409/- alongwith interest but dropped demand of Service Tax of Rs. 650/- . He also imposed penalty of Rs. 5,000/- under Section 77 of the Act and Rs. 53,409/- under Section 78 of the Act with an option of reduced penalty as provided under Section 78. He did not impose any penalty under Section 76 of the Act.

3. Being aggrieved by the impugned order, appellant preferred the present appeal mainly on the following grounds:

3.1 The impugned order is untenable in law since the same is vague in nature as Para 5 of the impugned order mentioned that during the period prior to 01.07.2012, only services specified in clause (105) of section 65 of the finance act, 1994 were taxed under the charging section 66. It is also mentioned that w.e.f 01.07.2012 all services, other than the services specified in the negative list under Section 66D or exempted otherwise, are taxable services under Section 66B. They are not denying the correctness of these provisions. The department and the adjudicating authority has not tried to understand the reasons for the difference between the figures as provided in the P&L Account (prepared for filing Income Tax Return) and figures as per ST-3 Returns.  Actually Income tax return is prepared on the basis of accrued income whereas Service Tax is paid on income received/receivable as per the bills raised during the financial year and ST-3 Returns are also filed accordingly. Hence there is nothing surprising about difference between figures as per P&L Account and figures as per ST-3 return. The Difference in P&L Figure and ST-3 Figure occurs due to the following genuine reasons.

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1. Bills prepared in the previous financial year, but provision for the accrued income has been provided in the Current Financial Year as per the provisions of the Income Tax Act. Here the income will be booked in ST-3 return in previous financial year, whereas income will be booked in Profit & Loss account of the Current year. There is no Service Tax Revenue loss to the Government since the service tax has been paid in the previous year when bill was raised. But because of this there will be difference between P&L figure and ST-3 return figure of Previous year as well current year.
2. Bills prepared in the next financial year, but provision for the accrued income has been provided in the Current Financial Year as per the provisions of the Income Tax Act. Here the income will be booked in ST-3 return in next financial year whereas income will be booked in Profit & Loss account of the Current year. There is no Service Tax Revenue loss to the Government, since the service tax will be paid in the next year when bill will be raised. But because of this there will be difference between P&L figure and ST-3 return figure of next year as well as current year.
3. Credit Note (against our current bills) prepared in the next financial year, but provision for the 'income effect' has been provided in the Current Financial Year. Here the effect of income will be booked in ST-3 return in next financial year whereas effect of income will be booked in Profit & Loss account in the Current year. There is no Service Tax Revenue loss to the Government, since the Service Tax has been paid in the current year when bill was raised and adjusted in the next year when Credit Note was issued. But because of this there will be difference between P&L figure and ST-3 return figure of next year as well current year.
4. Bad Debts (against current bills) incurred in the next financial year, but provision for the 'income effect' has been provided in the Current Financial Year. Here the effect of the income will be booked in ST-3 return in next financial year whereas effect of income will be booked in Profit & Loss account in the Current year. There is no Service Tax Revenue loss to the Government, since the Service Tax has been paid in the current year when bill was raised and adjusted in the next year



when bad debts was booked. But because of this there will be difference between P&L figure and ST-3 return figure of next year as well current year.

5. They separated service tax registration in Delhi Branch (Service Tax Registration No. AAECA9098HST002) and Cochin Branch (Service Tax Registration No. AAECA9098HST001), the ST-3 returns in respect of such branches are filed at these places. The Income as per Profit & Loss Account includes income of such branches also whereas the income as per ST-3 return reflects only Head office (Gandhidham) billings. There is no Service tax revenue loss since all the branches and HO pay service tax in their own jurisdiction area.
6. The difference between figure in Profit & Loss Account and ST-3 return will be there if they has done services specified in the negative list U/s.66D or exempted services. In this case also there is no service tax revenue loss to Government.

They rely on judicial pronounce of Honourable CESTAT, Chennai in the case of J. I. Jesudasan Vs. CCE Maduri in support of above submission that there will be difference between figures appearing in income tax return prepared on accrued income and figures appearing in ST-3 Return. The Department and the adjudicating authority has not considered the above actual reasons for the difference between figures appearing in income tax return prepared on accrued income and figures appearing in ST-3 Return, even though they filed detailed submission dated 19.02.2016 and dated 12.04.2016, explaining in detail at the time of personal hearing. The Adjudicating Authority has neither verified the actual facts to find out the actual reasons for the difference nor called them for further clarification to explain real facts. Hence the impugned order itself is illegal and void and has to be withdrawn immediately.

3.2 The impugned order in the case of 'Custom House Agency' has not considered their submission dated 12.04.2016 along with reconciliation statement, in which they clearly mentioned that they paid excess service tax @12.36 % (i.e.Rs.13,412/-) for an excess bill amount of Rs.1,08,517/- for the F.Y.2012-13 as detailed below:

	FY-2012-13	CHA
AS PER PROFIT & LOSS ACCOUNT		361642000

ADD:	
CREDIT NOTE RAISED IN 2013-14, BUT PROVIDED IN P&L A/C. OF 2012-13 AS PER THE REQUIREMNT OF STATUTORY AUDIT. SERVICE TAX REVERSED IN MAY & JUNE'2013. HENCE NO REVENUE EFFECT.	2146869
BAD DEBTS RECOVERY-2012-2013 AND SERVICE TAX PAID IN MARCH 2013. HENCE NO REVENUE EFFECT.	716865
BILL RAISED IN 2012-13, BUT PROVIDED IN P&L ACCOUNT OF 2011-12, SERVICE TAX PAID IN MAY 2012 TO SEPTEMBER'2012). HENCE NO REVENUE EFFECT.	1205125
TOTAL	365710859
LESS:	
SERVICE TAX PAID BY DELHI BRANCH HAVING SEPERATE ST REGISTRATION INCLUDED IN THE P&LL NOW REVERSED. SERVICETAX PAID UNDER DELHI ST REGISTRATION. HENCENO REVENUE EFFECT.	3026255
BILL RAISED IN 2013-14, BUT PROVIDED IN P&L ACCOUNT OF 2012-13AS PER THE REQUIREMENT OF STATUTORY AUDIT. SERVICE TAX PAID IN MAY 2013. HENCE NO REVENUE EFFECT.	285788
CHA AGENCY RECEIPT SERVICE TAX EXEMPTED SINCE OUR SERVICES ARE PROVIDED TO SEZ UNITS FROM WHOM CERIFICATE OF EXEMPTION RECEIVED. HENCE NO REVENUE EFFECT.	625790
CREDIT NOTE RAISED IN 2012-13, BUT PROVIDED IN P&L A/C. OF 2011-12.SERVICE TAX REVERSED IN JUNE'2012 TO SEPT'2012. HENCE NO REVENUE EFFECT.	142925
BILL RAISED IN 2013-14, BUT PROVIDED IN P&L ACCOUNT OF 2012-13. SERVICE TAX PAID IN MAY 2013 -BELAPUR. HENCE NO REVENUE EFFECT.	420050
TOTAL	4500808
AS PER PROFIT & LOSS RECONCILIATION	361210051
TOTAL ST-3 RETURNS VALUE FOR CHA SERVICE	361318568
EXCESS BILL AS PER ST RETURN	108517
EXCESS SERVICE TAX PAID AS PER ST RETURN @12.36%	13412

From above reconciliation statement, it is clear that the amount as per Profit & Loss Account is Rs. 36,16,42,000/- which requires adjustment due the reasons stated in para supra. After adjustment the revised Profit & Loss Account figure is Rs.36,12,10,051/- whereas ST-3 return figure is Rs.36,13,18,568/-, resulting excess figure as per ST-3 return of Rs. 1,08,517/-. So the value of ST-3 return is more than the Profit & Loss Account in 'Custom House Agency'. Hence no

further service tax liability in 'Custom House Agency' for the year 2012-13.

3.3 The impugned order in the respect of 'Steamer Agent Services', has not considered their submission dated 12.04.2016 along with reconciliation statement, in which they clearly mentioned that they paid excess service tax @12.36% (i.e.Rs.422/-) for an excess bill amount of Rs.3416/- for the F.Y.2012-13 as detailed below:

	FY-2012-13	SA
	AS PER PROFIT & LOSS ACCOUNT	17948000
	ADD:	
	TOTAL	17948000
	LESS:	
	BILL RAISED IN 2013-14, BUT PROVIDED IN P&L ACCOUNT OF 2012-13AS PER THE REQUIREMENT OF STATUTORY AUDIT. SERVICE TAX PAID IN MAY 2013. HENCE NO REVENUE EFFECT.	90000
	CREDIT NOTE RAISED IN 2012-13, BUT PROVIDED IN P&L A/C. OF 2011-12. SERVICE TAX REVERSED IN JUNE'2012 TO SEPT2012. HENCE NO REVENUE EFFECT.	22049
	TOTAL	112049
	AS PER PROFIT & LOSS RECONCILIATION	17835951
	TOTAL ST-3 RETURNS VALUE FOR CHA SERVICE	17839367
	EXCESS BILL AS PER ST RETURN	3416
	EXCESS SERVICE TAX PAID AS PER ST RETURN @12.36%	422

From the above reconciliation statement it is clear that the amount as per Profit & Loss Account is Rs. 1,79,48,000/- which requires adjustment due to the reasons stated in para supra. After adjustment the revised Profit & Loss Account figure is Rs.1,78,35,951/- whereas ST-3 is Rs.1,78,39,367/-, resulting excess figure as per ST-3 return of Rs.3,416/-. So the value of ST-3 return is more than the Profit & Loss Account in Steamer Agent Services'. Hence there is no further service tax liability in 'Steamer Agent Services' for the year 2012-13.

3.4 The impugned order is barred by limitation and therefore unsustainable since necessary ingredients to invoke extended period is completely absent in the present case, as according to their records actually there is no shortfall in payment of applicable service tax, the necessary ingredients to invoke the said

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additional service tax like fraud or collusion or willful mis-statement or suppression of facts or contravention of any provisions of the Act with the intent to evade payment of service tax is completely absent in the present case. They have duly charged service tax in their invoices wherever applicable and in the present case, Department and the adjudicating authority has not found any of our bills without charging service tax, they were under the bona-fide belief that they had followed the provisions of the Finance Act 1994 correctly by paying service tax for all the bills raised. The audit was conducted in February 2014, whereas, the impugned notice has been issued in March, 2016 i.e. after a gap of almost 25 months. The present matter involve mistake of the auditors due to oversight and in such kind of issues extended period of limitation cannot be invoked and hence the impugned notice is barred by limitation.

3.5 They further submitted that the impugned order proposing recovery of interest is unwarranted and unsustainable in law since the proposed recovery of service tax itself is unsustainable in law both on merits as well as limitation.

3.6 They stated that present issue involves mistake on part of CERA auditors and there is no mistake on their part, in such kind of cases penalty cannot be imposed. There is no demand of Service Tax and there will not be any question of penalty. No material information which is required to be disclosed is deliberately, consciously or purposefully concealed by them and there is no violation of any provisions of Finance Act, 1994 as wrongly alleged in the impugned order and hence the question of levy of penalty does not arise, in absence of any violation on their part taking into account the law laid down by the following judgements.

1. CCE, Mumbai-IV v. Damnet Chemicals P. Ltd.[2007 (216) ELT 3 (SC)].
2. CC v. Seth Enterprises [1990(49) ELT 619 (Tri.- Del.)]



They further submitted that imposing penalty for failure to carry out the statutory obligation is the result of quasi criminal proceedings and penalty would not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of dishonest conduct or acted in conscious disregard which is completely absent in the present matter.

4. A personal hearing in the matter was attended by Shri Rajan Jacob M,

Director (Finance), Shri Gulamayudin Gagdani, Legal Executive who reiterated the grounds of appeal; that they have nothing more to add; that Service Tax has been paid correctly by them and difference in ST-3 return and profit and loss account has been properly explained to adjudicating authority; that they have maintained account correctly and paid Service Tax correctly; that the lower adjudicating authority did not passed correct order.

FINDINGS:

5. I have carefully gone through the facts of the case, the impugned order, appeal memorandum and submissions made during the personal hearing. The issue to be decided in the present case is as to whether the appellant was liable to pay Service Tax under "Customs House Agent Service" and "Steamer Agent Service" on difference between taxable value as mentioned in the Balance Sheet and ST-3 returns, or not.

6. I find that the audit has noticed the difference in value shown in ST-3 returns and shown in Balance Sheet/ Profit & Loss account, and asked to pay Service Tax on differential value. The appellant has listed out the reasons for difference of value between ST-3 returns and Profit & Loss account. The main reason stated by them is that Profit & Loss account prepared under Income Tax Act on the basis of accrued income whereas Service Tax is paid on income received/receivable as per the bills raised during the financial year. The appellant has in detail explained the reasons, which led to the difference in value shown in ST-3 returns and Profit & Loss Account viz. (i) Bills prepared in the previous financial year, but provision for the accrued income has been provided in the current financial year (ii) Bills prepared in the next financial year, but provision for the accrued income has been provided in the current financial year (iii) Credit note against current bill prepared in the next financial year, but provision for the income effect has been provided in the current financial year (iv) Bad debts against bills incurred in the next financial year, but provision for the income effect has been provided in the current financial year (v) they had separate Service Tax registration for Delhi branch, Cochin branch and Gandhidham head office. The income as per Profit & Loss Account includes income of such branches also whereas the income as per ST-3 return reflects only Gandhidham head office billing. (vi) the difference between figures in Profit & Loss account and ST-3 returns due to services

specified in the negative list or exempted services.


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7. For difference in value for services under Customs House Agent Service and Steamer Agent Service, the appellant has provided table justifying the difference between value shown in ST-3 returns and Profit & Loss Account alongwith documentary evidences before lower adjudicating authority as well as before me. I find that the lower adjudicating authority has not considered the defense reply filed by the appellant and recorded cryptic reasons just to confirm demand without justified reasons which can not be upheld. When the detailed defense reply duly supported by the documentary evidences are there before the adjudicating authority, he has to consider each and every aspects to give his findings, which has not been done in this case. The appellant has made out their case with reasons duly supported by documents to substantiate their claim, which is correct, legal and proper. Therefore, I hold that the demand of Rs. 53,409/- raised on differential value is not tenable.

8. Since the demand itself is not sustainable, recovery of interest and imposition of penalty do not arise at all. Therefore, I set aside the impugned order and allow this appeal filed by the appellant.

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

9. The appeal filed by the appellant is disposed of in above terms.


(कुमार संतोष)
आयुक्त (अपील्स)

By R.P.A.D.

To,

M/s. ACT Infraport Ltd., Plot No. 391
& 392, Sector 1/A, Near Mamlatdar
Office, Gandhidham, Dist.: Kutch-
370201

मे. एसीटी इन्फ्रापोर्ट लिमिटेड, प्लॉट सं.
३९१ एवं ३९२, सेक्टर १/ए, तहसीलदार
ऑफिस के पास, गांधीधाम, जिल्ला: कच्छ-
३७०२०१

Copy to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad. *for his kind information pl.*
- 2) The Commissioner, GST & Central Excise, Kutch, Gandhidham.
- 3) The Assistant Commissioner, GST & Central Excise, Gandhidham.
- 4) The Superintendent, GST & Central Excise, Range, Gandhidham.
- 5) Guard File.