

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

दवितीय तल, जी एस टी अवल / 2st Floor, GST Blavan. रेस कोस रिंग रोड, Race Course Ring Road.



राजकोट | Rajkot - 360 001

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

रजिस्टर्ड डाक ए. डी. दवारा :-

अपीत प्राकृत संद्रात Appeal / File No.

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

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

आदेश का दिलांक /

05.12.2017

जारी करने की तारीख Date of issue:

06,12,2017

Date of Order:

कुमार सतीष, आयुक्त (अपील्स), राजकोट द्वारा पारित / Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

अपर आयुक्ता संयुक्त आयुक्त अयुक्ता सहायक आयुक्त, केन्द्रीय १८०६ शुन्का संवाकर, राजकोट / जराजकर / नगौपाम। इतार उपरविविध जारी ग मान अन्देश में शक्ति /

Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnegar / Gandhidham

अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name & Address of the Appellant & Respondent :-391/392. Sector 1A,Near Mamlatdars Infraport Ltd., Plot No. Act Office, Gandhidham - Kutch - 370 201

इस आदेश(अपीत) से व्यक्ति कोई व्यक्ति पीरजातिका लोके से उपयुक्त पापिकारी / पापिकाल के लाम अपील दायर कर सकता है। Any person aggreesed by this Order is-Appeal may fire an appeal to the appropriate authority in the following way.

सीमा शुरूत केन्द्रीय उत्पाद शुरूक एवं सेटाकर अपीतीय स्थायाधिकरण के पति अपीतः, केन्द्रीय उत्पाद शुरूक अधिनियम 1944 की धारा 358 के असमीर एवं जिल्ल अधिनियम, 1994 की धारा 86 के अन्तर्गत जिल्लाविकार अरह की जा सकारी है ए (A)

Appeal to Customs, Excise & Service Tax Appollate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 on appeal lies to:-

वरीकरण सुरुपाकन में प्रस्कृतिया गयी जायाने ग्रीमा गुनक, केन्द्रीय उत्पादन मुख्य एवं मेवाकर भगीतीय न्यायाधिकरण की विशेष पीठ, वेस्ट वर्जीक ने 6B प्रमा नहे दिल्ली को की आजी वाहिए ।/

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.

उपरोक्त परिश्तिह र्रा(a) में बताए गए अपीर्ध के अगरता एक मधी लगेले तीम एक केट्रीय उत्पाद काम एवं नेपाकर अपीलीय न्यावाधिकरण (विश्तेह) की परिचम क्षेत्रीय पीठिकर , दक्षितीय तत बहुमाली मधन अमार्थ अहमदावादी उद्धारित की की आजी पातिए थ To the West regional bench of Customs, Excile & Service Tax Appellate Tribunal (CESTAT) at 2° Floor, Bhaumai Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para. 1(a) above (9)

अपीलीय न्यापाधिकरण के समक्ष अपील प्रश्नुन करने के लिए केन्द्रीय उत्पाद शाक (अपील) विश्वनावाली, 2001, के लिया 0 के अपनेल लियोंचित किए गर्प प्रमाद EA-3 को शार पतियों में दर्ज किया जाना पतिए । इतने में कम में कम एक पति के साथ, ज्ञा उत्पाद शाक की मांग आप की मांग और लगाया गया ज़लेना, त्या 5 लाख या उत्पाद कम के मांग और लगाया गया ज़लेना, त्या 5 लाख या उत्पाद कम के लाख स्थाप की अपील के पति सावत्र करें। लियोचित शाक का मुख्यान, संबंधित अपीलीय त्यामाधिकरण की शाया में साथ पति हमा में कियोचित शाक का मुख्यान, संबंधित अपीलीय त्यामाधिकरण की शाया के साथ पति हमा मांग एतिए। सर्वाचित की शाया के साथ पति हमा मांग पति एति सावत्र की शाया किया मांग एतिए। सर्वाचित हमा स्थानन की की शाया किया मांग एतिए। सर्वाचित हमा स्थानन की की उस शाया में तीम पाहिए जहां सर्विया अपीलीय स्थामाधिकरण की शाया दिखा है। स्थानम अपील (सर्व अपीले) के लिए आहेदन यह के साथ 500। रुपान का निर्धाचित शुक्त अपा करना होगा।// (110)

The appeal to the Appellate Tribural shall be filled in quanticolicate 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 demandinterestipenally/refund is upto 5 Lec. 5 Lec. 5 Lec. to 50 Lec and above 50 Lec respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any commated public sector bank of the place where the bench of any norminated 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/.

अपीतीय स्थावाधिकाण के अवस्त अपीत दिन्न अधितियां। 1994 की पाप 86(1) के अनर्गन सेवाकर निम्मवाली, 1994 के लिवस 16(1) के नहस्त्र निपारित प्रथम 5.1.5 में पाप परियों से की जा सकती एवं उनके साथ जिस आदेश के लिवस अपीत की लगी हो, उसकी पति साथ में अन्यास की (उनकी से एक पति प्रमाणित होती पाहिए। और इंग्से से बात में काम पत्र पत्र के शाध जाएं मेंपावाद की साथ द्वारा की साथ मेंपावाद की साथ मान कराना का उनकी मान 5 लाइ का 5 लाइ करा थे 50 लाइ लाग 194 क्षाय 194 क्षाय का माणावाद की साथ है हो बात 1,000, रूपने 5,000, रूपने अपाय 10,000/- रूपने का निपारित जान की की की पत्र पत्र की पत्र की साथ से किस की साथ निपारित जान की की साथ की की की देश की की देश की की पत्र की माणावाद की साथ की की साथ से की साथ से की साथ से की साथ से होना की साथ से होना की साथ से की साथ से की साथ से की साथ से होना की साथ से होना साथ से साथ की साथ से होना साथ से साथ साथ से साथ स (El)

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.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 lone 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 herich of nominated Public Section Bank of the place where the bench of Tribunal is shoulded. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-

- tis Their selfation, 1994 at ann 86 at proteinst (2) on (2A) is seein a 45 aut selfa stora Thasannit, 1994, is linear 9(2) on 967A) के तहत निर्धारित प्रयथ S.T. 7 में की जा सकेशी एवं उसके साथ आयुक्त केशीय उत्पाद शुल्क अथवा आयुक्त (अपीव), केशीय उत्पाद शुल्क दकता चारित आदेश की पतियों सारस्य को (उससे सं एक पति प्रसारित होती चारित) और आयुक्त देशता सहासक आयुक्त अध्वा उपायुक्त, केन्द्रीय उत्पाद शुक्ता नेताकर, को अर्थातीय स्थामाधिकरण को अर्थदन दुन करने का निर्देश देने वाले आदेश की पति भी साथ में सारस्य करनी होगी । / The appeal under sub section (2) and (2A) of the section (8 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) 4 9(2A) of the Service Tax Rulen. 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 tile the appeal before the Appellate Tribunal
- (9) सीमा भूतमः केन्द्रीय उत्पाद शुरू एम सीवाकर अमीतीम पाविकरण (संस्ट्रेट) के पति अमीती के मामाने में कन्द्रीय उत्पाद शुरू असितिसम 1944 की पारा 35राज के आरोत जो की किरतेय आंधितिया. 1994 की धारा 83 के आरोत रोग्राकर को भी लागू की गई है, इस आदेश के बीटि अपीजीय पाधिकरण में अपील करते समय उत्पाद शुन्वशीय कर आत के 10 प्रतिशत (10%), जब माग एवं जुनोता विवादित है, वा कुरोता, जब केवल प्रयोगा विवादित है, का मुख्तान किया जाए. यक्षों कि इस धारा के अरोत जामा कि जाने वाली अपीक्ति देव गति दस करोड़ रुपए से अधिक स हो।

केन्द्रीय उत्पाद शहक एवं संग्रका के अंगरेत 'आग किए तए शुरुत' में जिस्स शासिस है

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शेतवेड जमा की तो गई मतत राशि 00

शंपकेत प्रथम विकासकती के जिस्सा ६ के अन्तरेत देश स्थान

- बचर्ने यह कि इस धारा के वावधान फिलोव (सं. 2) आंधनियन 2014 के आरम में पूर्व किसी अपीओव वाधिकारी के लाम विकासील स्थापन अजी एवं अधीय को लामू नहीं होते।/

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 63 of the Finance Act. 1994, an appeal against this order shall be before the Tribunal as 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:

impaint determined under Section 11 D.

00 amount of empheous Cenval Credit taken.

040 amount payable under Rule 6 of the Cerval Credit Rules

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

भारत सरकार को पत्नीक्षण आवेदन :

warehouse

115

(C)

Revision application to Government of India
इन आदेश की पुन्तीक्षण आदिका जिल्लानिकार सामन्द्र से केटीय उत्पाद शुरूक आदिशिया 1994 की पाल 35EE के प्रथम परंतुक के अतर्गत आवर अधिय आधार संस्थार, पुन्तीकाण अवदात हैकाई, विधार सामन्य राजस्य विभाग चीयों अजिल जीवन दीय अवस्त संसद सामें आई दिल्ली-110001 को Tieturi seneti serfeteri

A revision application ses to the Under Secretary to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Joevan Deep Building, Parlament Sheet, New Defin-110001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35E dist.

- गदि मान के किसी नुकसात के सामार्थ में जहां नुकसान किसी साल की किसी कारखाने में मणा गृह के धारणमन के दौरान या किसी अन्य कारखाने था किर किसी एक मेंसर गृह में दूसरे महार गृह धारणमान के दौरान या किसी भगा गृह में या भेडारण में मान के प्रश्नकाण के दौरान किसी कारखाने था 00 िसती सदार मुद्र में बात के मुक्ताम के मामले मी। In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to enother 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
- भारत के बाहर किसी राष्ट्र या क्षेत्र को जिल्लीत कर रहे मान के विनिर्माण में प्रमुकत करती मान पर भगी गई केन्द्रीय उत्पाद सुनक के छुट (रिबेट) के (16) मामाने में, औं माहत के बाहर किसी राष्ट्र या तोब को प्रियात की गयी है। / In case of rebate of duty of excise on goods exported to any country or territory outside links of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- पदि उत्पाद शुरूक का भुगतान किए जिला भारत के बाहर, मेपान या भुटान की मान जिसीन कियर गया है। र (iii) In case of goods exported outside India export in Negal or Bhutan, without payment of duty.
- लविक्शित प्रत्याद के अध्यादम मुजन के जुद्धतान के जिए जो उपूरी केन्द्रिय इस अधिनियम एवं इसके विभिन्न प्रत्यामी के तहत मान्य की रुई है और ऐसे आदेश जो आधुकत (अमीन) के दुलाए वित्त अधिनियम (स. 7), 1998 की धारा 109 के दुलाए नियम की रुई तारीख अध्या समायाविधि पर या बाद में fiv1 वर्गील किए सर्ट है। Credit of any duty allowed to be unliked 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 affair, the date appointed under Sec. 109 of the Finance (No.2) Act. 1955.
- उपरोक्त आहेदन की दी प्रतिक्ष प्रपत्र सकता EA-8 में. जो की केन्द्रीय उत्पादन शुन्क (अपीन) निवस्तवनी, 2001 के प्रियम 9 के अनर्गत विकिर्देश्य है. इस आदेश के त्यंपण के 3 साह के आहोत की जानी पाहिए । उपरोक्त आहेदन में लाध सूत्र आदेश ये आहेत की दो पतिया सनका की जानी पाहिए। आह ही केन्द्रीय उत्पाद शुन्क अधिनियस 1944 की धार 35-EE के तहत दिधोरित गुनक की अदाधनी के लक्ष्य के तीर पर 18-6 की प्रति TVS संसम्ब की अपने कारिए। (

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 OID and Order in-Appeal it should also be accompanied by a capy of TR-6 Challan invidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

- प्रमुखिया अनेदन के माथ जिस्सीतिक्षित निर्धाति शहक की अद्भावती की जानी पाकिए । नहीं तत्तरन रकत एक लाख कमने था तसने कम ही तो रूपये 200/ का कुशतान किया। जाए और यदि समस्म रकत एक लाख रूपये से ज्यादा हो तो रूपये 1000 / का स्थानन किया जाए । (wi) The revision application shall be accompanied by a fee of Rs. 2007- where the amount involved in Rupees One Lac or less and Rs. 10007- where the amount involved is more than Rupees One Lac.
- पदि इस आदेश में कई मून आदेशों का समावेश हैं तो उत्पेक सून आदेश के लिए शास का मुगतान उपायंका उस है किया जाना पाड़ियों इस तक्य के होने हुए भी की जिखा पढ़ी बात है जाते के लिए प्रशाहियांने अपीतीय जाताप्रकाश की एक अर्थाय सामित साकार को एक आदेश किया जाता है 17 In case. If the order covers various runnbors of order- in Original fee for each Q.10. should be paid in the aforesaid manner. (D) not withstanding the fact that the one appeal to the Appetant Tribunal or the oce application to the Central Govt. As the case may be, it filled to avoid scriptions work if excessing Rs. 1 take the of Rs. 1000 for mich.
- वधारतीपित स्थानावत मुक्त अधिनियम १९७५ के उनुसूर्य । के अनुसार मून आदेश एवं स्थान आदेश की पति पर विशोधित 6.50 धन्ये का स्थानावय मुक्त दिक्ति तसा होता व्यविधा । (E) One copy of application or 0.10 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.
- तीमा शुरूक मेन्द्रीय उत्पाद शतक एवं संशाकत अपीतीय स्थायाधिकाण (कार्य जिपि) नियमणानी १९४२ में वर्णित एवं अस्य संबन्धित मामजी को सम्बन्धित कार्य वाले प्रियमों की और मी ध्यात आकर्षित किया जाता है। / (F) Attention is also mated to the rules covering these and other setated matters contained in the Customs Excise and Service Appellate Tribunal (Procedum) Rules, 1982.
- प्रकार अधिकार पारिकारी को अधिन दाखिन करने में नवीदिन स्थापक विस्तान और अधिकार प्राथमिक के लिए, अधिकारी विश्वासी (G) www.cbec.gov.in =7.2tg start # 11 For the elaborate, detailed and latest provisions reliating to filling of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.chec.gov.in.

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:: ORDER-IN-APPEAL ::

M/s. ACT Infraport Ltd., Plot No. 391 & 392, Sectior 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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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.

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- 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.
- Being aggrieved by the impugned order, appellant preferred the present appeal mainly on the following grounds:
- The impugned order is untenable in law since the same is vague in 3.1 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. Www. 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

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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

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	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.	
	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.	
Г	TOTAL	365710859
r	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 EXEMPTEED 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
L	TOTAL	4500808
	AS PER PROFIT & LOSS RECONCILIATION	36121005
F	TOTAL ST-3 RETURNS VALUE FOR CHA SERVICE	361318568
ľ	EXCESS BILL AS PER ST RETURN	108517
	EXCESS SERVICE TAX PAID AS PER ST RETURN @12.36%	1341

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 SEPT 2012. 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 bonafide 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 furthers 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)].
 - CC v. Seth Enterprises [1990(49) ELT 619 (Tri.- Del.)]

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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.

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

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Director (Finance), Shri Gulammayudin 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:

- 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.
- I find that the audit has noticed the difference in value shown in ST-3 6. 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.



- 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.
- 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.
- अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।
- The appeal filed by the appellant is disposed of in above terms.

(कुर्मार संतीष) आयुक्त (अपील्स)

By R.P.A.D.

To.

M/s. ACT Infraport Ltd., Plot No. 391 & 392, Sectior 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:

- The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad In this Kind in Journation bl.
- The Commissioner, GST & Central Excise, Kutch, Gandhidham.
- 3) The Assistant Commissioner, GST & Central Excise, Gandhidham.
- The Superintendent, GST & Central Excise, Range, Gandhidham.
- Guard File.