::आयुक्त (अपील्स) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), CENTRAL GST & EXCISE.
द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot – 360 001
Tele Fax No. 0281 – 2477952/2441142
Email: cexappealsrajkot@gmail.com

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/42/RAJ/2017	**DC/JAM/ST/06/2016-17**	**30.11.2016**

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

RAJ-EXCUS-000-APP-204-2017-18

आदेश का दिनांक / Date of Order:	**29.01.2018**	जारी करने की तारीख / Date of issue:	**02.02.2018**

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

अधिसूचना संख्या २६/२०१७-के.उ.शु. (एन.टी.) दिनांक १७.१०.२०१७ के साथ पढे बोर्ड ऑफिस आदेश सं. ०५/२०१७-एस.टी. दिनांक १६.११.२०१७ के अनुसरण मे, श्री गोपी नाथ, अपर महानिदेशक ऑडिट, अहमदाबाद जोनल यूनिट को वित्त अधिनियम १९९४ की धारा८५, केंद्रीय उत्पाद शुल्क अधिनियम १९४४ की धारा ३५ के अंतर्गत दर्ज की गई अपीलों के सन्दर्भ मे आदेश पारित करने के उद्देश्य से अपील प्राधिकारी के रुप मे नियुक्त किया गया है.

In pursuance to Board's Notification No. 26/2017-C.Ex.(NT) dated 17.10.217 read with Board's Order No. 05/2017-ST dated 16.11.2017, Shri Gopi Nath, Additional Director General of Audit, Ahmedabad Zonal Unit, Ahmedabad has been appointed as Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 85 of the Finance Act, 1994.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham :

घ **अपीलकर्ता &** प्रतिवादी का नाम एवं पता /Name & Address of the **Appellants &** Respondent :-

M/s The Port Officer, Gujarat Meritime Board, Okha Port OKHA- 361330

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

(A) सीमा शुल्क ,केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम ,1944 की धारा 35B के अतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अर्तगत निम्नलिखित जगह की जा सकती है ।/
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए ।/
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) मे बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- ३८००१६ को की जानी चाहिए ।/

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

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

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

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

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

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

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

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

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

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

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

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.

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

(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules

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

(C) **भारत सरकार को पुनरीक्षण आवेदन :**
Revision application to Government of India:
इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में।/
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /
In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा सेमायाविधि पर या बाद में पारित किए गए है।/
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए । उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /
The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए ।
जैहाँ संलग्न रकम एक लाख रूपये या उससे कम है तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 1000 -/ का भुगतान किया जाए ।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस आदेश में कई मूल आदेशो का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है । / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। /
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

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ORDER-IN-APPEAL

This order arises on account of an appeal filed by, M/s. Gujarat Maritime Board, Okha Port, Okha (herein after referred to as 'the appellant' for the sake of brevity) against an Order-In Original No. DC/JAM/ST/06/2016-17 Dated 30.11.2016 issued on 02.12.2016 (herein after referred to as the 'impugned order' for sake of brevity) by the Deputy Commissioner, Central Excise & Service Tax Division, Jamnagar (herein after referred to as the 'Adjudicating Authority' for sake of brevity).

2. Briefly stated the facts of the case are that -

(i) the appellant are holding Service Tax Registration No. AABCG6676LST023 for providing the Port Services. In response to letters dated 08.04.2015 and 19.06.2015 of the jurisdictional Range Superintendent, the appellant vide letter dated 21.07.2015 had provided the details of the category of services, income received from such services and service tax leviable etc. for the period from October,2013 to March,2015. The amount considered by the appellant on which no service tax had been paid for the subsequent period from October,2013 to March,2015 which was tabulated as under.

Name of Service	**October-13 to March-2015 (in Rs.)**
Vehicle Entry Fee	3702146/-
Other Income	532223/-
Canteen Rent	10500/-
Electricity Charges	153885/-
Licence Fee (Certificate Amendment Charges)	79695/-
Total	4478449/-
Rate of Service Tax	12.36%
TOTAL SERVICE TAX	**5,53,537/-**

These facts culminated into issuance of a Show Cause Notice dated 07.10.2015 to the

appellant demanding Service Tax of Rs.5,53,537/- for the period from October,,2013 to March,2015 under Section 73(1) of the Finance Act,1994 with interest and proposing penalties in the impugned SCN.

(ii) The appellant during the course of the adjudication proceedings, pleaded that demand in the present SCN for non payment of service tax on the income of Rs. 23,47,422/- received under various heads for the period upto September,2014 i.e. from 01.10.2013 to 30.09.2014 had already been covered in the previous SCN dated 17.03.2015 for which earlier OIO dated 25.02.2016 had been issued and there was a duplication of demands in the present case. The Adjudicating Authority has considered that there was a duplication of demand on the amount of Rs. 22,13,422/-for the period from 01.10.2013 to 30.09.2014 and hence, held that the said value of Rs. 22,13,422/- involving service tax of Rs. 2,73,579/- being covered wrongly in the present SCN and hence, not to be considered for the purpose of adjudication. Ultimately, the case was taken up for adjudication for the remaining amount of Rs.22,65,027/- as detailed under.

Name of Service	**October-14 to March-2015 (in Rs.)**
Vehicle Entry Fee	1758546/-
Other Income	342666/- which included the amount of Rs. 1,34,000/-)
Canteen Rent	0
Electricity Charges	84615/-
Licence Fee (Certificate Amendment Charges)	79200/-
Total	**22,65,027/-**

(iii) The Adjudicating Authority under the impugned order confirmed the demand of Service Tax of Rs.2,50,877/- for the period from October,2014 to March,2015 in respect of various taxable services as detailed at Table- B of para-21 of the impugned order, under Section 73(1) of the Finance Act,1994 and dropped the demand for Rs.2,73,579/- (*as the same pertained to the period from October, 2013 to September,2014 which was covered under earlier SCN dated 17.03.2015 and OIO dated*

25.02.2016) and also ordered for interest under Section 75 of the Finance Act, 1994 on the amount of service tax confirmed and imposed penalty of Rs. 2,50,877/- under Section 78(1) of the Finance Act,1994 and a penalty of Rs.10,000/- under Section 77(1) and Penalty of Rs.10,000/- under 77(2) of the Finance Act,1994. Also dropped the demand of Rs.29,081/- being non-taxable to service tax as detailed at Table- A of para-21 of the impugned order.

3. Aggrieved, the appellant had filed present appeal on the grounds interalia mentioned as under:-

(i) The appellant contended that they had made various submission and oral arguments before the Adjudicating Authority. However, the Adjudicating Authority had clearly overlooked the same and mechanically confirmed the demand under the impugned order. Therefore, the impugned order is non speaking order which has been passed in gross violation of principles of equality, fair play and natural justice and hence, the same is liable to be set aside on this ground itself. Reliance is placed on various decisions of the higher judicial forum by the appellant in support of their contention.

(ii) With effect from the period 01.07.2012, and on being introduction of taxation of services on the basis of negative list, the activities of the appellant are exempted by way of Entry No.39 of Mega Notification No. 25/2012-ST dated 20.06.2012, since their activity is covered within the municipal function as defined in Article-243W of Constitution of India. The functions entrusted to Municipality under Article-243W of the Constitution includes matters listed in Twelfth Schedule thereto which includes activity at sr. No.2- "Regulation of Land-use and Construction of buildings" of the Twelfth Schedule. The appellant contended that since they are authority for regulating the land use covered within the port area and collection of Vehicle Entry fee, License fee, Application fee are for their activities covered within the municipal function as defined under Article-243W of the Constitution and hence, exempted from service tax vide Sr. No.39 of Mega Notification No. 25/2012-ST dated 20.06.2012 w.e.f.01.07.2012. The Adjudicating Authority had not dealt with this submission hence, the impugned order is to be set aside.

(iii) The appellant are a body constituted under the provisions of Gujarat Maritime Board Act,1981 to administer minor ports within the state and hence, it is a sovereign public authorities and thus, there can not be levy of service tax on Vehicle Entry fee, Application fee, License fee etc collected by them as the charges are collected for discharging sovereign function assigned to them under the scheme of the constitution. Reliance is placed on the CBEC circular No. 89/7/2006-ST

dated 18.12.2006 as well as Master Circular dated 23.08.2007 and also FAQs 2008 dated 04.12.2008 and FAQs 2010 dated 01.09.2010 issued by DGST. Further, no findings are given by the Adjudicating Authority on this submission. Reliance is placed on various decisions of the higher judicial forum by the appellant in support of their contention.

(iv) As the levy of tax on the entry of vehicles is specifically assigned to the State Government vide Entry-57 which governs the taxes on vehicles whether mechanically propelled or not and vide Entry-59 which governs Tolls and the Vehicle entry fees collected by them governed by Entry-57 & 59 of List II of Schedule VII of the Constitution of India which is subject matter of State Government, no tax can be collected by the Central Government. Further, the vehicle entry fees are being levied by them in compliance of The Bombay Landing & Wharfage Fees Act,1882 and Rules made there under and thus, appellant have to charge the vehicle entry fee and since the same is collected in compliance of statutory obligation, the same can not be equated with rendering service. Thus, confirmation of demand of service tax of Rs. 2,17,357/- on the said vehicle entry fee of Rs.17,58,546/- under the impugned order is not sustainable.

(v) With regards to confirmation of demand of service tax of Rs. 23,731/- on Application Fee of Rs.1,92,000/- under the impugned order, the appellant contended that though the service tax was charged on this amount and also paid by the appellant which included in the excess payment of service tax of Rs. 6,68,197/-, the confirmation of said demand is bad in law; that the Adjudicating Authority was appraised with these facts during personal hearing too and if at all not satisfied should have asked for original day wise registers and records to his satisfaction; that to dispense proper justice, the matter may be remanded back for limited purpose of verification and confirmation of excess payment of Rs.6,68,197/- and also for verification of their claim of having collected and paid the service tax on the said Application Fee.

(vi) Cum-Tax benefit should have been given. As the consideration received is inclusive of service tax payable, benefit of Cum-Tax should have been given and value should be derived there from. Reliance is placed on various decisions of the higher judicial forum by the appellant in support of their contention.

(vii) Penalty under Section 78 ibid is wrongly imposed as they have not suppressed any facts. Further, issue involved in this case is of interpretation of law and the appellant were under bonafide belief of non levy of tax on this activity. Thus, as non of the five conditions for imposing penalty under Section 78 ibid is there in the present case, imposition of penalty under Section-78 ibid is wrong. Reliance is placed on various decisions of the higher judicial forum by the appellant in support of their contention.

(viii) Penalty under Section 77 ibid is wrongly imposed as Section 77 since non of the conditions specified in the various clauses of Section 77 are applicable in the

present case.

(ix) As there was a bonafide belief on their part that the impugned activities were not subject to service tax and hence, Section 80 of the Finance Act, 1994 also applicable in the present case and thus, no penalty can be imposed. Reliance is placed on various decisions of the higher judicial forum by the appellant in support of their contention.

(x) As the demand confirmed under the impugned order is not maintainable, the order for interest under Section 75 ibid is also not sustainable.

4. Hearing was held on 18.12.2017, wherein Shri H.P.Singh Virk, Chartered Accountant, appeared on behalf of the appellant and reiterated the submissions of the appeal memorandum and requested to decide the case accordingly.

5. I have gone through the appeal memorandum and oral submission made during personal hearing. I proceed to decide the case on merits since the appellant has made payment of mandatory deposit of Rs.19,000/- (7.5% of Rs.2,50,877/- vide Challan CIN No.00053470601201711100 dated 06.01.2017 and thus, complied with the requirement of fulfillment of mandatory pre deposit in pursuance to the amended provisions of Section 35F of the Central Excise Act,1944 made applicable to Service Tax matter in terms of the Section 83 of the Finance Act,1994 effective from 06.08.2014.

6. The issue for decision before me is whether or not service tax is leviable on the vehicle entry fee, Licence fee and Application fee, collected by the appellant during the period from October,2014 to March,2015. I find that there is no dispute about the amount of vehicle entry fee, Licence fee and Application fee collected by the appellant during the period in question.

6.1 I find that the Adjudicating Authority under the impugned order confirmed the demand of Service Tax of Rs.2,50,877/- for the period from October,2014 to March,2015 in respect of various taxable services as detailed at Table- B of para-21 of the impugned order, which is reproduced as under for ease of reference.

TABLE-B

Sr. No.	Income received under following category	October-14 to March-15
1.	Vehicle Entry Fees	Rs.17,58,546/-
2.	Canteen Rent	0
3.	Licence Fee (Certificate Amendment Charges)	Rs.79,200/-
4.	Application Fee	Rs. 1,92,000/-
Total		Rs.20,29,746/-
Rate of Service Tax		12.36%
TOTAL SERVICE TAX		Rs.2,50,877/-

6.2 Thus, from above, it is clear that the demand of service tax of Rs.2,50,877/- on the value of Rs.20,29,746/- had been confirmed under the impugned order in respect of Vehicle Entry fee, License fee and Application fee, collected by the appellant during October,2014 to March,2015. I also find that the Adjudicating Authority at para-14, 15 and 16(a) of the impugned order, has elaborately discussed the nature of services provided for which said Vehicle Entry fee, License fee and Application fee had been collected by the appellant. Accordingly, I find that the vehicle entry fee had been collected in respect of vehicles entering/going out of the port with import/export cargo, vehicles of shipping agents going to ship etc. The License fee had been collected for issuing/amending various certificates to various parties, clients, vessel owners/agents etc. So far Application fees are concerned, it is the submission of the appellant that they had collected the service tax thereon and paid the same also. Thus, from above facts, there is no dispute on the collection of Vehicle Entry fee, License fee and Application fee by the appellant. I find that the definition of "Port Services" had been amended w.e.f. 01.07.2010 and accordingly, any service rendered within a port or other port, in any manner is covered within the term "Port Service". Further, taxable service thereto as defined under Section 65(105)(zn) of the Finance Act, 1994 means any service provided or to be provided to any person, by any other person, in relation to port services in a port, in any manner. Thus, collection of Vehicle Entry fee, License fee and Application fee for services rendered by the appellant at Port area covered within the taxable service "Port Services".

7. However, the appellant has vehemently contended on various grounds as interalia mentioned at para-3 above. The appellant contended that they are a body constituted under the provisions of Gujarat Maritime Board Act,1981 to administer minor ports within the state and hence, it is a sovereign public authorities and thus , there can not be levy of service tax on vehicle entry fee, License fee and Application fee collected by them as the charges are collected for discharging sovereign function assigned to them under the scheme of the constitution. Reliance is placed on the CBEC circular No.89/7/2006-ST dated 18.12.2006 as well as Master Circular dated 23.08.2007 and also FAQs 2008 dated 04.12.2008 and 2010 dated 01.09.2010 issued by DGST. For ease of reference, the said circular is reproduced as under.

Circular No. 89/7/2006- ST

Dated: 18th December, 2006

F.No. 255/1/2006-CX.4

Government of India

Ministry of Finance

Department of Revenue

(Central Board of Excise and Customs)

Subject: Applicability of service tax on fee collected by Public Authorities while performing statutory functions /duties under the provisions of a law – regarding

A number of sovereign/public authorities (i.e. an agency constituted/set up by government) perform certain functions/ duties, which are statutory in nature. These functions are performed in terms of specific responsibility assigned to them under the law in force. For examples, the Regional Reference Standards Laboratories (RRSL) undertake verification, approval and calibration of weighing and measuring instruments; the Regional Transport Officer (RTO) issues fitness certificate to the vehicles; the Directorate of Boilers inspects and issues certificate for boilers; or Explosive Department inspects and issues certificate for petroleum storage tank, LPG/CNG tank in terms of provisions of the relevant laws. Fee as prescribed is charged and the same is ultimately deposited into the Government Treasury. A doubt has arisen whether such activities provided by a sovereign/public authority required to be provided under a statute can be considered as 'provision of service' for the purpose of levy of service tax.

2. The issue has been examined. The Board is of the view that the activities performed by the sovereign/public authorities under the provision of law are in the nature of statutory obligations which are to be fulfilled in accordance with law. The fee collected by them for performing such activities is in the nature of compulsory levy as per the provisions of the relevant statute, and it is deposited into the Government treasury. Such activity is purely in public interest and it is undertaken as mandatory and statutory function. These are not in the nature of service to any particular individual for any consideration. Therefore, such an activity performed by a sovereign/public authority under the provisions of law does not constitute provision of taxable service to a person and, therefore, no service tax is leviable on such activities.

3. However, if such authority performs a service, which is not in the nature of statutory activity and the same is undertaken for a consideration not in the nature of statutory fee/levy, then in such cases, service tax would be leviable, if the activity undertaken falls within the ambit of a taxable service."

From plain reading of the above circular it transpires that (i) if the activities performed by the sovereign/public authorities under the provision of law are in the nature of statutory obligations which are to be fulfilled in accordance with law, (ii) if fee collected by them for performing such activities is in the nature of compulsory levy as per the provisions of the relevant statute, (iii) if such activity is purely in public interest and is undertaken as mandatory and statutory function (iv) if these are not in the nature of service to any particular individual for any consideration. If these conditions are satisfied then and then such an activity performed by a sovereign/public authority under the provisions of law does not constitute provision of taxable service to a person and, no service tax is leviable on such activities. Now, issue to be examined that the activity for which Vehicle

Entry fee, License fee and Application fee collected by the appellant, satisfy these conditions or not.

7.1 The appellant, The Gujarat Maritime Board, has been constituted under the provisions of Gujarat Maritime Board Act,1981 to administer the minor ports in the state, by the Gujarat State Government. Hence, I refer the provisions of the said Gujarat Maritime Board Act,1981 so as to see the works and services to be provided by the appellant i.e. Gujarat Maritime Board and I find that as per Section 25 of the said Act, the Board may execute work within or without limits of ports, and provide such appliances as it may deem necessary or expedient Viz.

Such work and appliances may include -

(a) .wharves, quays, docks, stages, jetties, piers, place of anchorage and other works within the port or port approaches or on the foreshore of the port or port approaches in the State, with all convenient arches, drains, landing places, stairs, fences, roads, bridges, tunnels and approaches, and buildings required for the residence of the employees of the Board as the Board may consider necessary;

(b) buses, locomotives, rolling stock, sheds, hotels, warehouses and other accommodation for passengers and goods and other appliances for carrying passengers and for conveying, receiving and storing goods landed, or to be shipped or otherwise;

(c) moorings and cranes, scales and all other necessary means and appliances for loading and unlading of vessels;

(d) reclaming, exCavatingand raising and raising any part of the foreshore of the port or port approaches which may be necessary for the execution of the works authorised by this Act or otherwise for the purposes of this Act;

(e) such breakwatersand otherworksas maybe expendientfor the protectionof the . port; . (0 dredgers and other machines for cleaning, widening, deepening aOdimproving any portion of the port or poit approaches or of the foreshore of the port or port approaches; .

(g) light-houses, liglit-ships. beacons. buoys. pilot boats and other appliances necessary for the safe navigation of the port and the port approaches in so far as it relates.to State functions;

(h) vessels, tugs, boats, barges and launches and lighters for the use within the limits of the port"or beyond those limits. whether in territorial waters or othetwise, for the purpose of towing or rendering assistance to any vessel, whether entering or leaving the port or bound elsewhere and for the purposes of saving or protecting life or property and f9r the purpose of landing, shipping or transhipping passengers or goods under section 32; .

(i) sinking of tubewells and equipment, maintenance and use of boats, barges and other appliances for the purpose or the supply of water at the port; . .

j) engines and other appliances necesSary for the extinguishing of tires;.

(k) land abutting the sea coast including creeks;

(l) ferry boats and other works and equipment appertaining to the running ferry service or between the ports;

(m) 'construction of models and plans for carrying out hydraulic studies;

(n) dry docks, slipways, boat basins and workshops to carry out repaiis or overhauling of vessels, tugs, boats, machinery or other appliance.

Thus as per the above Act, the appellant is to do the above work which can be considered as its sovereign functions.

7.2 Further, as per Section 32 of the said Act, The Board shall have power to undertake the following services :- (a) stevedoring, landing, shipping or transhipping passengers and goods between vessels in port and the wharves, piers, quays, or docks belonging to or in the possession of the Board; (b) receiving, removing, shifting, transporting, storing or delivering goods brought within the Board's premises; (c) carring passengers within the limits of the port or port approaches, by such means and subject to such restrictions and conditious as the State Government may think fit to impose; and (d) piloting, hauling, mooring, remooring, hooking or measuring of vessels or any other service in respect of vessels.

7.3 Form above facts, it is crystal clear that the above functions and services by the appellant can be considered as their sovereign function.

7.4 From the facts mentioned herein above, the function of collection of Vehicle Entry fee, License fee and Application fee is examined so as to ascertain whether it can be considered as sovereign functions by the appellant. The work and services as detailed at paras 7.1 and 7.2 above are considered to be the sovereign function of the appellant and the same does not include the activity or function for which Vehicle Entry fee, License fee and Application fee collected. Further, the Vehicle Entry fee, License fee and Application fee for providing services, also does not fall within the terms and conditions as specified vide CBEC circular No.89/7/2006-ST dated 18.12.2006 as referred at para-7 above.

7.5 In view of above, I hold that the activities of providing services for which the Vehicle Entry fee as well as License fee and Application fees collected, cannot be considered as the sovereign function of the appellant.

8. Further, the appellant contended that on or after 01.07.2012, on introduction of taxation of services on the basis of negative list, the activities of the appellant are exempted by way of Entry No.39 of Mega Notification No. 25/2012-ST dated 20.06.2012, since their activity is covered within the municipal function as defined in Article 243W of Constitution of India ; that the functions entrusted to Municipality under Article 243W of the Constitution includes matters listed in Twelfth Schedule thereto which inclues activity at sr. No.2- "Regulation of Land-use and Construction of buildings" of the Twelfth Schedule. The appellant contended that since they are authority for regulating

the land use covered within the port area and collection of Vehicle Entry fee, License fee, Application fee are for their activities covered within the municipal function as defined under Article-243W of the Constitution and hence, exempted from service tax vide sr. no.39 of Mega Notification No. 25/2012-ST dated 20.06.2012 w.e.f.01.07.2012. However, contended that the Adjudicating Authority had not dealt with this submission hence, the impugned order is to be set aside.

8.1 This contention is also of no help to the appellant in view of the facts and discussion herein at above para-7 and sub paras thereto.

8.2 Further, as per the amendment in the Union Budget of 2010-11 and clarification made by the CBEC in Para-1.4 of the Annexure-B of Circular No.334/1/2010 TRU dated 26.02.2010, all the services provided entirely within the Port/Airport premises are to be considered as Port Services and the same should be treated as Port Services. Further, vide CBEC circular No.D.O.F.No.334/03/2010-TRU New Delhi, dated 1st July 2010, it is clarified that in the Finance Bill, 2010, with intent to ease the classification disputes, the definitions of port, other port and airport services were amended to comprehensively cover under their ambit, all services provided within an airport or a port or other port irrespective of whether or not such activities are authorized by the authorities or whether or not they are otherwise classifiable as distinct taxable services. In effect all services that are wholly rendered within the prescribed area of the port or other port or an airport, are to be classified within the ambit of 'port services' or 'airport services'. Since, the period involved is from October,2014 to March,2015, the amendment carried out by the Finance Act, 2010 is very much applicable in the present case.

8.3 Further, after 01.07.2012, on introduction of taxation of services on the basis of negative list, I find it appropriate to refer the relevant provisions of law which are reproduced as under for the ease of the reference.

> **SECTION [66B. Charge of service tax on and after Finance Act, 2012.** —There shall be levied a tax (hereinafter referred to as the service tax) at the rate of [fourteen per cent.] on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.]
>
> [* * *]

From above provisions, it transpires that service tax shall be levied on all services other than those services specified in the negative list.

> **SECTION [66D. Negative list of services.** — The negative list shall comprise of the following services, namely :—
>
> (a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere—

[(i) * * * *]

(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;

(iii) transport of goods or passengers; or

(iv) [Any service], other than services covered under clauses (i) to (iii) above, provided to business entities;

As per Section 66D ibid, the negative list comprise also the services by Government or a local authority excluding the following services also to the extent they are not covered elsewhere.

(iv) [Any service], other than services covered under clauses (i) to (iii) above, provided to business entities;

Thus, from above it is clear that if the services are provided by the Government or a local authority to business entities, then the same is also taxable after 01.07.2012.

9. In view of above facts and discussion, I hold that that services provided for which the Vehicle Entry fee as well as License fee and Application fees collected, can not be considered as the sovereign function of the appellant and their activity being not covered within the municipal function as defined in Article 243W of Constitution of India, the appellant is not eligible for the exemption under Notification No. 25/2012-ST dated 20.06.2012. And hence, in view of the above facts, the reliance placed on various decisions of the higher judicial forum by the appellant in support of their contention, is of no help to them.

10. Further with regard to the contention as interalia mentioned at Para-3(iv) above that the levy of tax on the entry of vehicles is specifically assigned to the State Government vide Entry-57 which governs the taxes on vehicles and vide Entry-59 which governs Tolls and the Vehicle entry fees collected by them governed by Entry-57 & 59 of List II of Schedule VII of the Constitution of India which is subject matter of State Government, no tax can be collected by the Central Government, I find that this contention is rather misplaced since issue involved in the present case is of not collecting tax on vehicles, but service tax on the vehicle entry fees. Further, Tolls collected is entirely different thing and same can not be equated with the entry fee being collected for allowing the vehicles into the port. Reliance is placed on the CBEC Circular No. 152/3/2012-S.T., dated 22-2-2012, the relevant portion thereto is reproduced as under for ease of refrence.

2. Service tax is not leviable on toll paid by the users of roads, including those roads constructed by a Special Purpose Vehicle (SPV) created under an agreement between National Highway Authority of India (NHAI) or a State Authority and the concessionaire (Public Private Partnership Model, Build-Own/Operate-Transfer

> arrangement). 'Tolls' is a matter enumerated (serial number 59) in List-II (State List), in the Seventh Schedule of the Constitution of India and the same is not covered by any of the taxable services at present. Tolls collected under the PPP model by the SPV is collection on own account and not on behalf of the person who has made the land available for construction of the road

From above it is clear that Toll which is paid by the user of the roads, including those roads constructed by a SPV created under an agreement between NHAI/SA and the concessionaire (PPP Model or BOPT arrangement) and thus,'Tolls' is a matter enumerated (serial number 59) in List-II (State List), in the Seventh Schedule of the Constitution of India. Thus, Tolls collected is entirely different thing and same can not be equated with the entry fee being collected in respect of vehicles entering/going out of the port with import/export cargo, Vehicles of shipping agents going to ship etc.

10.1 Thus, this contention is rejected being not sustainable in the eyes of law.

11. With regards to confirmation of demand of service tax of Rs. 23,731/- on Application Fee of Rs.1,92,000/- under the impugned order, the appellant contended as interalia mentioned at para-3(v) above. It is the contention of the appellant that that though the service tax was charged on this amount and also paid by the appellant which included in the excess payment of service tax of Rs. 6,68,197/-, the confirmation of said demand is bad in law; that the Adjudicating Authority was appraised with these facts during personal hearing too and if at all not satisfied should have asked for original day wise registers and records to his satisfaction.

11.1 I find that the Adjudicating Authority at para 16(a) of the impugned order very categorically observed that "... during the personal hearing the Noticee has submitted that they have collected applicable service tax on APPLICATION FEES and also paid the same alongwith monthly income. However, the Noticee has not provided any documentary evidence in the support of their above contention..... Further, on verification of the Annual Account of Revenue Income submitted by the Noticee for the said period, it is evident that income under the head of Application Fees has been shown under the head of Non-Taxable income on which no service tax was paid upon."

11.2 I find that the appellant contended that out of excess paid of Rs. 6,68,197/- , the amount involved for Application fee was Rs.23,731/- (i.e. 12.36% of Rs.1,92,000/-) and the same was claimed by the appellant as item on which service tax was collected and also paid. Further, also contended that as for residue amount of Rs. 6,44,466/- (6,68,197- 23,731), it was not possible to pin point specific revenue head though considered non-taxable but on which service tax was collected and paid as that would entail verification of thousands of invoices for the whole financial year. Further, contended that that excess collection of service tax took place in certain cases,

inadvertently, as the concerned clerk who prepared and raised service bill might charged and collected service tax on items otherwise considered non-taxable by them.

11.3 From the discussion herein above at paras-11.1 and 11.2 above, it transpires that the appellant's contention that amount of service tax of Rs. 23,731/- on Application fee of Rs.1,92,000/- involved in the present case is covered in the amount of excess payment made by them. However, I find that in support of this contention, the appellant had not placed any concrete evidence and calculation sheet neither with the appeal memorandum and documents appended to the appeal memorandum nor during the personal hearing placed before me. This is what exactly observed by the Adjudicating Authority in the impugned order apart from a specific observation that "Further, on verification of the Annual Account of Revenue Income submitted by the Noticee for the said period, it is evident that income under the head of Application Fees has been shown under the head of Non-Taxable income on which no service tax was paid upon.". Thus, in view of above discussion, I hold this contention of the appellant as rejected being not sustainable in the eyes of law.

12. The appellant contended that Cum-Tax benefit should have been given since the consideration received is inclusive of service tax payable. I find that the said contention of Cum-Tax value is not acceptable in view of the provisions of the Section 67(2) of the Finance Act,1994. Unless the invoice does not specifically indicate/mention that the gross amount charged includes service tax, it can not be treated as Cum-Tax value. The appellant has not produced any evidences which specify that the gross amount charged includes Service Tax. Therefore, in absence of any cogent evidences showing the gross value inclusive of Service Tax, the benefit of the Cum-Tax value can not be extended in view of the relevant provisions of the Section 67(2) of the Finance Act, 1994 and in pursuance to the decision of the Hon'ble Tribunal decision in the case of M/s Shakti Motors- 2008 (12) STR 710 (Tri.Ahmedabad). In view of the above, reliance placed on various decisions of the higher judicial forum by the appellant in support of their contention, is of no help to them.

13. The appellant has contended that penalty under Section 78 of the Finance Act,1994 has been wrongly imposed as they have not suppressed any facts. Further, issue involved in this case is of interpretation of law and the appellant were under bonafide belief of non levy of tax on this activity. Further, contended that as non of the five conditions for imposing penalty under Section 78 ibid is there in the present case, imposition of penalty under Section-78 ibid is wrong. I find that the Adjudicating Authority at para-24 of the impugned order very categorically observed that the appellant had failed to make correct assessment of the taxable service, failed to pay service tax due and failed to file ST-3 returns as well as failed to disclose the actual income received under various heads, which were taxable in respect of issues involved in the present

case and thus, contravened the provisions of law with intent to evade the tax. Further, I find that being holder of Service Tax Registration, the appellant was very much conversant with the provisions and procedures with regard to the Service Tax and hence, it was open to the appellant to approach the department for any clarification in case of any confusion or any problem in interpretation of issue of levy of service tax in the present case. I find that no such efforts were put by the appellant. Further, I find that similar demands were confirmed under the previous Adjudication proceedings for the earlier periods, was due to suppression of taxable value by not showing the taxable value in the ST-3 Returns which was detected by the department when their records were verified during Audit by the department. Had the department not unearthed the same during conducting of audit, it would have gone unassessed. Thus, the appellant contravened the provisions of law with clear intention of evading the tax and further, there was clear cut suppression with intent to evade the service tax. Hence, the penalty under Section 78 ibid is correctly imposed under the impugned order.

13.1 In view of the facts stated herein at para-13 above, the reason given by the appellant to justify the reasonable cause for their failure to pay the tax is not acceptable and thus, the appellant is not eligible to the benefit of provisions of Section-80 of the Finance Act,1994.

14. Further, with regards to penalty under Section 77 ibid, the appellant contended that penalty under Section 77 ibid is wrongly imposed since non of the conditions specified in the various clauses of Section 77 are applicable. I find that the Adjudicating Authority has imposed a penalty of Rs.10,000/- under Section 77(1) and Penalty of Rs.10,000/- under 77(2) of the Finance Act,1994. I also find that at Para-26 of the impugned order, it is observed by the Adjudicating Authority that "the Noticee had failed to furnish information, called for by them and therefore, for the above contraventions, I find that the Noticee is liable for penalty under Section 77(1) of the Finance Act,1994". Further, I also find that at Para-27 of the impugned order, it is observed by the Adjudicating Authority that "the Noticee had failed to correctly assess the service tax due on taxable service provided by them. The Noticee also failed to mention true value of taxable service as well as Service tax liability in the ST-3 Returns filed by them ..... As regards the period October,2014 to March,2015, I hold the Noticee liable to penalty under the provisions of Section 77(2) of the Finance Act,1994".

14.1 From above, it transpires that penalty of Rs 10,000/- each have been imposed under Section 77(1) and 77(2) ibid for the reasons as mentioned above. However, the appellant contended that penalty under Section 77 ibid is wrongly imposed since non of the conditions specified in the various clauses of Section 77 are applicable. To examine this contention I refer the provisions of Section 77 ibid which is reproduced as under for ease of refrence.

SECTION [77. Penalty for contravention of rules and provisions of Act for which no penalty is specified elsewhere. — (1) Any person, —

["(a) who is liable to pay service tax or required to take registration, fails to take registration in accordance with the provisions of section 69 or rules made under this Chapter shall be liable to a penalty which may extend to ten thousand rupees;]

(b) who fails to keep, maintain or retain books of account and other documents as required in accordance with the provisions of this Chapter or the rules made thereunder, shall be liable to a penalty which may extend to [ten thousand rupees];

(c) who fails to —

(i) furnish information called by an officer in accordance with the provisions of this Chapter or rules made thereunder; or

(ii) produce documents called for by a Central Excise Officer in accordance with the provisions of this Chapter or rules made thereunder; or

(iii) appear before the Central Excise Officer, when issued with a summon for appearance to give evidence or to produce a document in an inquiry,

shall be liable to a penalty which may extend to [ten thousand rupees] or two hundred rupees for everyday during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance;

(d) who is required to pay tax electronically, through internet banking, fails to pay the tax electronically, shall be liable to a penalty which may extend to [ten thousand rupees];

(e) who issues invoice in accordance with the provisions of the Act or rules made thereunder, with incorrect or incomplete details or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to [ten thousand rupees].

(2) Any person, who contravenes any of the provisions of this Chapter or any rules made thereunder for which no penalty is separately provided in this Chapter, shall be liable to a penalty which may extend to [ten thousand rupees.]

I find that penalty of Rs. 10000/- imposed under Section 77(1) ibid for their failure to furnish information, called for by them. However, I find that the appellant had in response to letters dated 08.04.2015 and 19.06.2015 of the jurisdictional Range Superintendent, the appellant vide letter dated 21.07.2015 had provided the requisite information. Further, I also find that penalty of Rs.10,000/- imposed under Section 77(2) ibid for their failure to correctly assess the service tax due on taxable service provided by them and also for their failure to mention true value of taxable service as well as Service tax liability in the ST-3 Returns filed by them . However, for said failure there is no provisions of imposition of penalty under Section 77(2) ibid as stated above. Further, for the said contraventions, specific provisions are there embodied under Section 70 of the Finance Act, 1994, which is reproduced as under for ease of refrence.

SECTION [70. Furnishing of returns. — [(1)] Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency [and with such late fee not exceeding [twenty thousand rupees,] for delayed furnishing of return, as may be prescribed.]

[(2) The person or class of persons notified under sub-section (2) of section 69, shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.]

14.2 In view of above discussion and facts, I hold that the penalty under Section 77 ibid, is wrongly imposed since non of the conditions specified in the various clauses of Section 77 are applicable.

15. In view of the facts and discussion herein above, I uphold the impugned order confirming the demand of Service Tax of Rs.2,50,877/- for the period from October,2014 to March,2015 in respect of various taxable services as detailed at Table- B of para-21 of the impugned order, under Section 73(1) of the Finance Act,1994 and also ordering for interest under Section 75 of the Finance Act,1994 on the amount of service tax confirmed and imposing of penalty of Rs. 2,50,877/- under Section 78(1) of the Finance Act, 1994. However, I set aside the impugned order for imposition of penalty of Rs.10,000/- under Section 77(1) and Penalty of Rs.10,000/- under 77(2) of the Finance Act,1994. The appeal filed by the appellant is thus, disposed off in above terms.

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

To,

M/s. Gujarat Maritime Board,
Okha Port, Okha.

Copy To:-

1. The Chief Commissioner, CGST, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, CGST, Rajkot.
3. The Commissioner, CGST, Appeals, Rajkot
4. The Deputy Commissioner, CGST Division, Jamnagar (Adjudicating Authority).
5. The Assistant Commissioner, Systems, CGST, Rajkot
6. Guard File.
7. P.A. File.