



सत्यमेव जयते

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राजकोट / Rajkot - 360 001

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रजिस्टर्ड डाक ए.डी.द्वारा :-

क अपील / फाइल नं. /  
Appeal / File No.  
V2/150/BVR/2018-19

मूल आदेश सं /  
G.I.O. No.  
AC/JND/07/2018

दिनांक /  
Date:  
1/5/2018

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

**BHV-EXCUS-000-APP-110-2019**

आदेश का दिनांक /  
Date of Order: 09.05.2019

जारी करने की तारीख /  
Date of issue: 09.05.2019

श्री कुमार संतोष, प्रधान आयुक्त (अपील्स), राजकोट द्वारा पारित /  
Passed by Shri Kumar Santosh, Principal Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ नेत्राकर/ वस्तु एवं सेवा कर,  
राजकोट / जामनगर / गान्धीधाम द्वारा उपरलिखित जारी मूल आदेश से मृजित /  
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST,  
Rajkot/Jamnagar/Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellants & Respondent :-  
M/s Gujarat Maritime Board, GMB Port Area, GMB Bhavan, Veraval.

इस आदेश (अपील) में व्यक्त कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकार / 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.

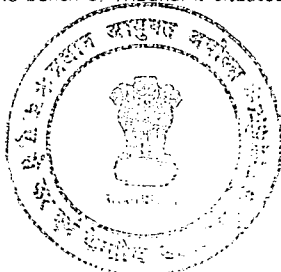
(A) मीना शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवा कर अपील न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है :  
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of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

(i) बर्लिन शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवा कर अपील न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं. 2, आर.के.पुरम, नई दिल्ली, भारत /  
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपील के अलावा शेष सभी अपील मीना शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवा कर अपील न्यायाधिकरण (मिस्टेट) की पश्चिम क्षेत्रीय पीठ, द्वितीय तल, बहमानी भवन अमावा अहमदाबाद- 380015 को की जानी चाहिए /  
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380015 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपील न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियम 2001, के नियम 6 के अंतर्गत निर्धारित क्रि. सं. प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहाँ उत्पाद शुल्क की माँग, ब्याज की माँग और लगाया गया जुर्माना, रुपय 5 लाख या उससे कम, 5 लाख रुपय या 50 लाख रुपय तक अथवा 50 लाख रुपय से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपील न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी नार्बलिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहाँ संबंधित अपील न्यायाधिकरण की शाखा स्थित है। स्थान आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपय का निर्धारित शुल्क जमा करना होगा।  
The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपील न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवा कर नियम 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.5 में चार प्रतियों में की जा सकती 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, जहाँ सेवा कर की माँग, ब्याज की माँग और लगाया गया जुर्माना, रुपय 5 लाख या उससे कम, 5 लाख रुपय या 50 लाख रुपय तक अथवा 50 लाख रुपय से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपील न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी नार्बलिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहाँ संबंधित अपील न्यायाधिकरण की शाखा स्थित है। स्थान आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपय 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/





:: ORDER IN APPEAL ::

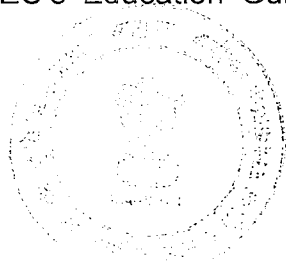
M/s. Gujarat Maritime Board, Port Area, GMB Bhavan, Veraval (hereinafter referred to as 'the appellant') has filed this appeal, against Order-In-Original No. AC/JND/07/2018 dated 01.05.2018 (hereinafter referred to as 'the impugned order') issued by the Assistant Commissioner, Central GST Division, Junagadh (hereinafter referred to as 'the lower adjudicating authority').

2. The brief facts of the case are that Show Cause Notice No. Audit/Circle-V/ST/AC-05/2017-18 dated 13.11.2017 was issued to the appellant demanding service tax of Rs. 15,40,983/- on income of Rs. 1,11,31,195/- received by them from the Government of Gujarat during the period from April, 2015 to March, 2016. The show cause notice was adjudicated by the lower adjudicating authority vide the impugned order wherein demand of service tax of Rs. 13,50,680/- was confirmed under Section 73(2) of the Finance Act, 1994 (hereinafter referred to as 'the Act') along with interest under Section 75 of the Act and penalties on the appellant were imposed under Section 77 and Section 78 of the Act with benefit of reduced penalty.

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

(i) The lower adjudicating authority has overlooked submissions of the appellant in their reply to the SCN and mechanically confirmed demand of service tax under the category of Business Support Service; that the appellant is a Government authority under GMB Act, 1981 and carries out functions under the mandate of the statute duly passed by the state legislature and the appellant is not rendering any service; that the case-laws relied upon by the appellant were brushed aside in the impugned order without discussing them; that the impugned order is a non-speaking order; that the appellant relied upon decisions in the case of Cyril Lasardo (Dead) reported as 2004 (7) SCC 431 and Shukla & Brothers reported as 2010 (254) ELT 6 (SC).

(ii) The Government of Gujarat has collected state charges under Section 22A of the Gujarat Maritime Act, 1981 and those charges have been directly credited to the consolidated fund of the Government of Gujarat; that the appellant has been given 15% of those charges as budget grant duly passed in the state legislature to meet the cost of administration; that they are Govt. authority for administration of minor ports and perform sovereign functions of the State of Gujarat and therefore, it cannot be said that the appellant has rendered any service. The appellant referred and reproduced definition of "service" provided under Section 65B(44) of the Act and contended that to qualify something as service, there should be consideration and there should be an activity; that there is no consideration by them and no activity for service in the present case. The appellant relied on Para 2.3 of CBEC's Education Guide and submitted that 15% of

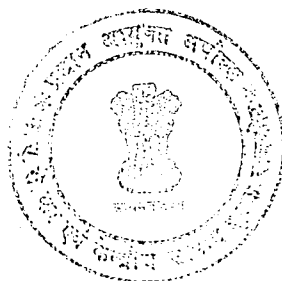


- charges collected by the Government of Gujarat has been allocated to the appellant as budgetary grant by the Government of Gujarat after duly passed by Gujarat State legislature and the same cannot be equated with the consideration for the service. The appellant relied on decision in the case of State Bank of Patiala reported as 2016 (45) STR 333 (Tri.- LB) to submit that even if it is assumed that the appellant has rendered service then also the appellant has acted as an agent of the Government of Gujarat and therefore, the ratio laid down in the aforesaid order is applicable in this case. The appellant has also relied on decisions in the case of UTI Technology Services Ltd. reported as 2012 (26) STR 147 (Tri. - Mum.), CESTAT, New Delhi's Final Order dated 13.4.2017 in the case of Employee Provident Fund Organization, Awasti Traders reported as 2017-TIOL-1537-CESTAT-MUM., Ideal Road Builders reported as 2017 (10) TMI 401-CESTAT Mumbai.

(iii) The appellant has carried out sovereign functions under Gujarat Maritime Board Act, 1981 and discharge of sovereign functions cannot be treated as rendition of service. The appellant relied on the decision of the Hon'ble Supreme Court in their own case reported as 2007 (14) SCC 704 to say that service tax cannot be levied on vehicle entry fee collected by the appellant as the charges collected for discharging sovereign function assigned to them under the scheme of the Constitution of India and placed reliance on Circular No. 89/07/2006 dated 18.12.2006, Master Circular dated 23.08.2007 issued by CBEC; FAQ 2008 dated 04.12.2008 and FAQ 2010 dated 01.09.2010 issued by DGST, CBIC, Government of India. The Appellant also placed reliance on the following decisions:-

- CMC Limited reported as 2007 (7) STR 702 (Tri.-Bang)
- CST, Bangalore reported as 2008 (9) STR 494 (Tri.-Bang)
- CS Software Enterprise Ltd. reported as 2008 (10) STR 367 (Tri.-Bang)
- Maharashtra Industrial Development Corporation reported as 2014-TIOL-2022-CESTAT-MUM.
- Maharashtra Industrial Development Corporation reported as 2017-TIOL-2629-HC-MUM-ST.
- Gujarat Maritime Board reported as 2015 (39) STR 529 (SC).

(iv) Para 7 and Para 8 of SCN alleged that the appellant is not Government and therefore, the activity carried out by the appellant is taxable. The observation of the lower adjudicating authority that the the appellant is not Government is not correct. The appellant reproduced definition of "Government" provided under Section 65B(2A) of the Act and contended that an entity which is required to keep accounts in accordance with Article 150 of the Constitution of India is treated as Government. As per Section 89 of the Gujarat Maritime Board Act, 1981, the Audit Report of the Comptroller & Auditor General of India is required to be present before the State legislature and therefore, the appellant



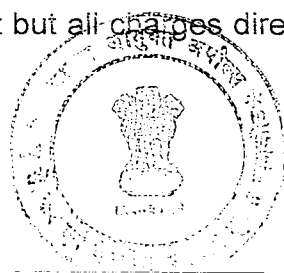
is Government. Section 66D(1) of the Act prescribes that the service provided by the Government is in negative list of services and therefore, service tax is not payable. Therefore, the appellant being Government, the service provided by them is excluded from service tax net.

(v) Sr.No. 39 of Notification No. 25/2012-ST dated 20.6.2012 grants exemption from payment of service tax on any activity carried out by the Government authority. The Government authority is defined in clause S of the Notification. The appellant is authority constituted under Gujarat Maritime Board Act, 1981 for control and administration of minor ports within the State of Gujarat, therefore, the appellant has carried out Municipal function within the meaning of Article 243W of the Constitution of India and therefore, they are not liable for payment of service tax. The appellant is set up under the Act of the State legislature and therefore, the condition of performance of municipal function would not apply to any authority who is established under the provisions of the State legislature. The appellant relied on decision in the case of Shapoorji Paloonji & Co. Pvt. Ltd. reported as 2016 (42) STR 681 (Pat.).

(vi) Penalty under Section 78 of the Act is not imposable since there is no short payment of service tax. There should not be intent to evade payment of service tax on the part of the appellant. They have always been and still under bona fide belief that they are not liable for payment of service tax. The appellant relied on decisions in the case of Hindustan Steel Ltd. Reported as AIR 1970 (SC) 253, Pushpam Pharmaceuticals Co. Reported as 1995 (78) ELT 401 (SC), Chemphar Drugs and Liniments reported as 1989 (40) ELT 276 (SC) in support of their contention.

(vii) The SCN did not specify under which sub-section, clause and sub-clause of Section 77 of the Act, the penalty is imposable. Since service tax is not payable on administrative charges received from the Government of Gujarat, the appellant is not required to obtain Registration certificate under Section 69 of the Act read with Rule 4 of Service Tax Rules, 1994 and also not required to file ST-3 returns under Section 70 of the Act read with Rule 7 of Service Tax Rules, 1994. Thus, none of the conditions of Section 77 of the Act are satisfied and hence, penalty under Section 77 of the Act cannot be imposed. Penalty is not imposable on them under Section 77 and 78 of the Act as the issue involves bona fide interpretation of law.

4. Personal hearing in the matter was attended by Shri Virk H. P. Singh, Chartered Accountant on behalf of the appellant, who reiterated the grounds of appeal and submitted that they are Govt./public authority; that they are not private body corporate but performing duty on behalf of the Government of Gujarat as per Section 22A of the Gujarat Maritime Board Act, 1981; that they do not provide any service to the Government of Gujarat, who are their masters; that they do not collect any charges from any customers under their account but all charges directly go to the consolidated fund of



Government of Gujarat; that they collect service tax on all applicable charges and that service tax portion is deposited to the Central Government accounts; that they are registered for the purpose of collection of service tax and payment of that service tax to Government account under Service Tax department; that what 15% administration charges are being given by Government of Gujarat comes to them only after being passed by state legislature as Budget grants to meet their day to day functions; that the Hon'ble Supreme Court in EPFO case has upheld the order of CESTAT reported as 2017 (4) TMI 902 - CESTAT Delhi that no service tax is payable on charges being collected by EPFO as they are public authority; that Hon'ble CESTAT in the case reported as 2018 (14) TMI 902-CESTAT Delhi has also held that DCF undertakes activities to protect forest and implement Government law and hence no service tax on them; that applicability of service tax to be read in context of GMB Act read with Finance Act and not only Finance Act.

4.1 The appellant in their additional written submissions stated that the issue involved is taxability of grants received by them as administrative charges in terms of Section 22A(3) of the GMB Act, 1981. The appellant has relied on decision in the case of Dy. Conservator of Forest & Dy. Field Director reported as 2018 (4) TMI 777 - CESTAT New Delhi to say that any act done under the statutory provisions cannot be equated with rendition of service and fees/charges received is not consideration for any service. The website of the Hon'ble Supreme Court does not shown the information that any appeal filed by the department against the said decision of the Hon'ble CESTAT, New Delhi. The appellant has also requested to condone the delay in filing the present appeal.

#### **FINDINGS:**

5. I have carefully gone through the facts of the case, the impugned order and the grounds of appeal made by the appellant in the Appeal Memorandum and submissions at the time of personal hearing. The issue to be decided is whether confirmation of demand of service tax on administrative charges received by the appellant from the Government of Gujarat under Section 22A(3) of the GMB Act, 1981 is correct or not.

6. The appellant has contended that they have been granted 15% of the state charges as administrative charges as they are sovereign authority for administration of all minor ports of the State of Gujarat and therefore, it cannot be said that the appellant has rendered any service to the Government of Gujarat. I find that the Government of Gujarat enacted Gujarat Maritime Board Act, 1981 and powers of administration, control and management of all minor ports of the State of Gujarat and for matters connected therewith were conferred to the Gujarat Maritime Board by the legislature of Gujarat State to levy and to collect fees as may be prescribed by the Government of Gujarat, which is directly deposited by different persons to the consolidated fund of the Government of Gujarat and through the appellant. The appellant has been granted Budget to meet their





prescribed by the Government of Gujarat directly to the Govt. treasury and no money comes to the account of the appellant, hence, it cannot be said that they are engaged in promotion or marketing of service provided by the Government of Gujarat or providing any customer care service to the port users and therefore, I am of the considered view that administrative charges granted to the appellant to meet their administrative expenses, to meet expenses for maintenance and conservation of minor ports cannot be considered to be an amount received towards rendition of service by the appellant to the Govt. of Gujarat or to the port users. Hence, I find that demand of service tax confirmed under the impugned order is not sustainable and the impugned order is, therefore, liable to be set aside.

7. In view of above facts and legal position, I am of considered view that the appellant is not liable to pay service tax on these administration charges received by them from the Government of Gujarat @ 15% of state charges collected under sovereign functions of the State. Hence, I hold that the impugned order confirming demand of service tax and interest thereon and imposition of penalties under Section 77 and under Section 78 of the Act is not correct, legal and proper.

8. In view of above, I set aside the impugned order and allow the present appeal.

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

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

निदेशक, प्रमुख  
निदेशक, प्रमुख  
जूनियर

(कुमार संतोष)  
प्रधान आयुक्त (अपील्स)

**By Speed Post**

To,

M/s. Gujarat Maritime Board, Port Area, GMB Bhavan, Veraval	गुजरात मैरिटाइम बोर्ड, पोर्ट एरिया, जीएमबी भवन, वेरावल
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प्रति:

- (1) प्रधान मुख्य आयुक्त, केन्द्रीय वस्तु व सेवा कर एवं केन्द्रीय उत्पाद शुल्क, अहमदाबाद क्षेत्र, अहमदाबाद को जानकारी हेतु।
- (2) आयुक्त, केन्द्रीय वस्तु व सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर को आवश्यक कार्यवाही हेतु।
- (3) सहायक आयुक्त, केन्द्रीय वस्तु व सेवा कर मण्डल, जूनागढ़ को आवश्यक कार्यवाही हेतु।

(4) गार्ड फ़ाइल

