हर्ण्या अपनिस्त का कार्यालय,वस्तु एवं सेवा करऔर केन्द्रीय उत्पाद शुल्कः: ::प्रधानआयुक्त (अपील्स) का कार्यालय,वस्तु एवं सेवा करऔर केन्द्रीय उत्पाद शुल्क:: O/O THE PRINCIPAL COMMISSIONER (APPEALS), GST &CENTRAL EXCISE

र्भाषा (1) सत्यनेव जयने

द्वितीय तल,जी एस टी भवन / 2nd Floor. GST Bhavan रेस कोर्स रिंग रोड / Race Course Ring Road <u>राजकोट / Ruikot - 360 001</u> Tele Fax No. 0281 - 2477952/2441142 Email: cexappeaisrajkot@gmail.com

<u>रजिल्टर्ड डाक ए.डी.दाराः</u> :-क अपील / फाइलमंख्या/ Appeal /File No. V2/150/BVR/2018-19

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मूल आदेश मं / ೧.I.O. No. AC/JND/07/2018 दिनांक/ Date: 1/5/2018

न्द्र अपीलआदेशसंख्या(Order-In-Appeal No.):

BHV-EXCUS-000-APP-110-2019

आदेश का दिनांक / **09.05.2019** Date of Craer: जारी करने की तारीख / Date of issue:

09.05.2019

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

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/वस्तु एवंसेवाकर, राजकोट / जामनगर / गांधीधाम द्वारा उपरलिखित जारी भूल आदेश से सृजित: / Arising out of above mentioned OIO issued by Additional/]cint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot/!amnagar/Gandhidham :

घ अपीलकर्ता&प्रतिवादी का नाम एवं पता /Name&Address of theAppellants&Respondent :-

M/s Gujarat Maritime Board, GMB Port Area, Chill Bhavan, Veraval.

इन आदश(अपाल) म व्यथित काई व्यक्ति निम्रालिखित तरीक म उपयुक्त प्राधिकारों / 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 लेकीय उत्पाद शुल्क एवं मेवाकर अपीलीय त्यायाधिकरण के प्रति अपील केकीय उत्पाद शुल्क अधिनियम ,1944 की धारा 35B के अंतर्गत एवं दिन अधिनियन, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जानकती है। Appeal to Customs, Excise & Service Tax Appellate Tributal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 at appeal lies to:-
- (i) व्यक्तिरुप्रमुख्यांकनमेमम्बन्धितमभीमामलेसीमाशुल्क,केन्द्रीयउत्पादनगुल्कगृवंसेवाकरणकीलीयन्यायाधिकरणकीविशेषपीठ,वेस्टब्लॉकनं2,आर के॰पुरम,नईदि ल्ली,कालीजानीत्याहिए।/ 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 वताए गए अपीलों के अलावा शेष मभी अपीले मीमा शुल्कवेंद्रीय उत्पाद शुल्क एवं मेवाकर अपीलीय न्यायाधिकरण (मिस्टेट)की पश्चिम क्षेत्रीय पीठिका,द्वितीय तल, बहुमाली भवन अमावा अहमदादाख- ३८००१ रका की जानी चाहिए।/ To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2ª Floor, Bhaumali Bhawan, Asarwa Ahmedabac-380016in case of appeals other than as mentioned in para- 1(a) above

अपीलीय न्यायाधेकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील)नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये (iii) प्रथत EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें भे कम एक प्रति के माथ, जहां उत्पाद शुल्क की माँग ,व्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उसमे कम,5 लाख रुपए या 50 लाख रुपए में कम एक प्रति के माथ, जहां उत्पाद शुल्क की माँग ,व्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उसमे कम,5 लाख रुपए या 50 लाख रुपए में कम एक प्रति के माथ, जहां उत्पाद शुल्क की माँग ,व्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उसमें कम,5 लाख रुपए या 50 लाख रुपए में क्रथवा 50 लाख रुपए में अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति मंलग्न करें। निर्धारित शुल्क का भुगतान, मंदंधित अपीलीय न्यायाधिकरण की शाख के महायक रजिस्टार के ताम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखीहेत बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होता चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा न्थित है। स्थगन आदेश (स्ट ऑर्डर) के लिए आवेदन-पत्र के साथ 509/- रुपए का निर्धारित शुल्क कमा 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 dutydemand/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, बित्त अधिनियस,1994की धाप 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें में एक प्रति प्रपत्र S.T.-5में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें में एक प्रति प्रमाणित होनी च हिए) और इनमें से कम से कम एक प्रति के साथ, लंडों सेवाकर की साँग ,व्याज 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 आधिक 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 मार्वजिनक क्षेत्र के वैंक द्वारा जारी रेखोंकित बैंक ड्राफ्ट द्वारा किया जाता चाहिए। संबंधित द्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय त्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑईर) के लिए आवेदन-पन 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 Lakis or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakis but not exceeding Rs. Fifty Lakis, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than five lakis but not exceeding Rs. Fifty Lakis, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakis rupees, in the form or 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/-



(1) winter institut yva S.T.-7 # fil at the 12 the (2) the (2) which as fil that walk, target for the filled in the (2) the (2) the filled and the filled in the off which as well as the filled and the filled in the off which as the filled and the filled in the off which and the filled and t Commissioner of Central Excise/ Service Tax to the Lie appeal before the Appellate Tribunal. अग्रेल के स्वेनीय उत्पाद शुल्क गई देवावर स्वीलीय प्राधिकरण (नेर्नट) रे एवि अग्रिमों के मामले में केल्यीय उत्पाद शुल्क अधिनियम 1944 की धान अग्रेल करने नमय उत्पाद शुल्क गई देवावर स्वीलीय प्राधिकरण (नेर्नट) रे एवि अग्रिमों के मामले में केल्यीय उत्पाद शुल्क अधिनियम 1944 की धान अग्रेल करने नमय उत्पाद शुल्क/नेवा कर मान के 10 जनिलन (1986), रुए मांच गई कर्यांना विवारित है, या तुर्माना, जब फेबल उर्जांन अग्रेल याछिकरण में अग्रेल करने नमय उत्पाद शुल्क/नेवा कर मान के 10 जनिलन (1986), रुए मांच गई कर्यांना विवारित है, या तुर्माना, जब फेबल उर्जांना विवारित है, अग्रेल करने नमय उत्पाद शुल्क/नेवा कर मान के 10 जनिलन (1986), रुए मांच गई कर्यांना विवारित है, या तुर्माना, जब फेबल उर्जांना विवारित है, अग्रेल करने नमय उत्पाद शुल्क गई मेहावर ने अवर्यव रुपा रोध गई कर्यांना विवारित है, या तुर्माना, जब फेबल उर्जांना विवारित है, अग्रेल उत्पाद शुल्क रही मेहावर ने अवर्यव रुपा रियेल के मान करोड कराय के अधिक न हो। (1) सेलदेट जना लियावर्की के जिर्जा रुपा राध गई कराय के जर्मा ने करोड कराय में अधिक न है। (1) सेलदेट जना लियावर्की के जिर्जा रियन कराय के अधिन राज हो रुपा शुल्क में निज्ञ शासिक है (1) सेलदेट जना लियावर्की के जिर्जा रुपा रेव राज के के करीन के जर्जा ने सुर्क करी कि अग्रिय प्राधिक ने के नमव विवारित है, का — वर्गन वहाँ यह कि हम धान के ब्राव्हा गई रियन करे के करीन के तक्त - वर्गन वहाँ हि इम धान के ब्राव्हा रुपा रेव रेव रेव रोग में राज कर्जा ने पूर्व किनी अग्रेलीय प्राधिकानी के नमव विवाराधीन त्यांन वहीं यह कि हम धान के ब्राव्हा त्या रेव रेव रोग के माठ त्यां के प्राय के कर्जा के हा राज है कर, 1944 which is also करवे वहा हि हम धान के ब्राव्हा होते। For an appeal to be filed before the CENA1, under Section 35F of the Central Excise Act. 1944 which is also before the Tribunal on payment of 10% of the dury centanded where duty or duly and penels, are in dispute, or ceiling of Rs. 10 Crores, Under Central Excise and Service Tax, 12/17 Demanded where duty or duly and penels, are in dispute, or (1) amount determined under Sorting 11 D)

(C)

(ii)

भारत सरकार कोपनरीक्षण आवेदन : Revision application to Government of India: इस आदेश के पुनरीक्षणयाचिका निम्नलिखित मामलों में, प्रदेश उत्पाद शाया श्रधिनियस, 1994 की धारा 35EB के प्रथमप्रतेष के अन्यतिक्षयर मचिव भारत मरकार, पुनरीक्षण आवेदन इकाह, दिस संवालय, राज्यद्व जिस्ता, कोथी मंदिल, जीवन दीप भवन, मंत्रद्र नाई, नई विल्ही-110001, को किया कारत सरकार / पुनरीक्षण आवेदन इकाह, दिस संवालय, राज्यद्व जिस्ता, कोथी मंदिल, जीवन दीप भवन, मंत्रद्र नाई, नई विल्ही-110001, को किया

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 Deihi-110001, under Section 35EE of the CEA 1944 in respect of the fellowing case, governed by first proviso to sub-section (1) of Section-35B ibid:

- वति माल के किसी नुकुसान के मामले में, जहां नुकुसान किसी माल को किसी कारदाने से भंडार गृह के पारंगमन के दौरान या किसी अन्य कारखाने वा फिर किसी एक भंडार गृह ने दूसरे भंडार गृह पारंगमन के दौरान, वा किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने वा किसी भंडार गृह में साल 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 (i)
- भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विभिन्तें में प्रयुक्त कई माल पर भरी गई केन्द्रीय उत्पाद युस्क के कुट (स्विट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की राजी है' / In case of rebate of duty of excise on scools 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. (11)
- यदि उत्पाद शुल्क का भुगतान किए विना भारत के बाहर, तेपाल या मुझल की साल निर्यात किया गया है। / In case of goods exported outside India export to Nevel or Bhutan, without payment of duty. $\left(\frac{111}{211}\right)$
- मुनिश्चित उत्पाद के उत्पादन शुल्क के भगतान के लिए जो छाटी फेहीट इस अधिनियन एवं इसके बिभिन्न प्रावधानों के तहत नात्क की गई है और ऐसे आवेश जो जायुक्त (अपील) के द्वारा बित्त अधिनियम (न॰ 2).1998 की धारा 109 के द्वारा नियेत की गई तारीख अथवा समायाविधि पर दा घाद में पारित किए (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 cate appointed under Sec. 109 of the Finance (No.2) Act, 1998. (\mathbb{T})
- उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में. जो की केन्द्रीय उत्पादन शुल्क (अपील्ट)नियमादली,2001, के नियम 9 के अंतर्यत विनिर्धिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए : उपरोक्त आवेदन के साथ मुरा आदेश द अपील आदेश की दो प्रतियां संख्य की जानी च हिए। साथ हो कन्द्रीय उत्पाद शुल्क अधिनियस, 1944 की धारा 35-EE के तहन तिधारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति मलप्र की जानी (v) 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 face on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OlO 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.
- पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अवायगी की रातरी काहिए। जहाँ संलग्न रकम एक लाख रूपये या उनमें कम हो तो रूपये 200/- को सुरतान किया। आए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रूपये 1000 -/ का भुगतान किया जाए। The revision application shall be accompanied by a dee 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. (vi)
- यदि इस आदेश में कई मूल आहेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुम्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पड़ी कार्य में वचन के लिए यथास्थिति अपलिश मजाशिकरण हो एक आपत था कंद्रीय सरकार का एक आवेदन किया जाता है। / In case, if the order covers variousnumbers of order- in Original, fee for each OIO. should be paid in the aforesaid manner, not withstanding the fact that the one appear 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. (D)
- यश्वासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूर्यान्द्र के अनुसार कुल आउंध एवं स्थरन आदेश की प्रति यर निर्धारित 5.50 रुपये का त्यायालय शुल्क दिकिट नमा 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. (Ξ)
- सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं मेवाकर अपीलीय त्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अत्य संवन्धित मामलों को सम्मितित करने वाले नियमों की और भी ध्यान आकर्षित किया रात्री हैं। / 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. (7)
- उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संवंधित व्याएक, विस्मुत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेवमाइट www.cbec.gov.in को देख मकते हैं।/ For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in. (G)

:: 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

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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 18.12.2005. 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 Appeliant 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



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- 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 Page No. 5 of 8

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Government of Gujarat; that they collect set the tax on all applicable charges and that service tax portion is deposited to the Cantral 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 capariment; that what 15% administration charges are being given by Government of Gujarat comes to them only after being passed by state legislature as Budget grant 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 Gujarat Maritime Board Act, 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

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administrative expenses by the Govt. of Gujarat, which cannot be equated with rendering of services to the Govt. of Gujarat or to different persons as clarified vide CBEC Circular No. 89/7/2006-ST dated 18.12.2006, point No. 999.01/23.08.2007 of master Circular dated 23.08.2007, FAQ 2008/04.12.2008 and FAQ 2010/01.09.2010 issued by DGST, CBEC, Government of India. In the present case, service tax has been demanded on the administration charges received by the appellant from the Government of Gujarat as Budgetary grant alleging that the said amount has been received towards rendition of Business Auxiliary Service defined under Section 65(19) of the Act.

6.1. I find that the appellant has received the grant @ 15% of total charges collected by the Govt. of Gujarat in the treasury of Gujarat in compliance to Section 22A(3) of the Act, which reads as under:

(3) <u>The State Government shall pay to the Board under the appropriation</u> <u>duly made by law in this behalf the administration charges computed at the</u> <u>rate of fifteen percent of the State charges levied by the State Government.</u> (Emphasis supplied)

6.2 From the above, it is clear that the Government of Gujarat is required to grant administration charges to the appellant to meet their expenses duly passed by the state legislature, at the rate of 15% of the state charges levied by the State Government and this does not come from different user of minor ports directly. Now, I would like to reproduce definition of "Business Auxiliary Service" as provided under Section 65(19) of the Act, which reads as under: -

(19) "business auxiliary service" means any service in relation to -

(i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or

(ii) promotion or marketing of service provided by the client; or

(iii) any customer care service provided on behalf of the client; or

(iv) procurement of goods or services, which are inputs for the client; or

[*Explanation.* — For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "inputs" means all goods or services intended for use by the client;]

(v) production or processing of goods for, or on behalf of, the client;

(vi) provision of service on behalf of the client; or

(vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision, and includes services as a commission agent, but does not include any activity that amounts to manufacture of excisable goods.

6.3 The appellant is an authority created under the statute duly passed by the legislature of the State of Gujarat and made responsible for levy and collection of fee, as



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prescribed by the Government of Gujarat consolity 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, which 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.

- अपीलकर्ता द्वारा दर्ज की गई अपील का निपटास उपरोक्त तरीके से किया जाता है। ९.
- 9. The appeal filed by the appellant is disposed off in above terms.

(कुमार संतोषा प्रधान आयुक्त (अपील्स)

By Speed Post

;	
M/s. Gujarat Maritime Board,	गुजरात मैरिटाइम बोर्ड,
Port Area,	पोर्ट एरिया
GMB Bhavan,	जीएमबी भवन
Veraval	वेरावल
0	

<u>प्रति</u>:

To.

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

🔏) गार्ड फ़ाइल



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