



:: आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर आर केंद्रीय उत्पाद शुल्क ::  
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE



द्वितीय तल, जी एस टी भवन / 2<sup>nd</sup> Floor, GST Bhavan  
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रजिस्टर्ड डाक ए.डी.द्वारा :-

क	अपील / फाइलसंख्या/ Appeal /File No. V2/34 & 35/BVR/2019	मूल आदेश सं / O.I.O. No. 06 to 07/SERVICE TAX/2018-19	दिनांक/ Date: 8/3/2019
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ख अपीलआदेशसंख्या(Order-In-Appeal No.):

**BHV-EXCUS-000-APP-228-To-229-2019**

आदेश का दिनांक/ Date of Order:	25.09.2019	जारी करने की तारीख / Date of issue:	26.09.2019
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श्री गोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित /  
Passed by **Shri Gopi Nath**, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/वस्तु एवंसेवाकर,  
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/ST / GST,  
Rajkot/Jamnagar/Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name & Address of the Appellants & Respondent :-  
**M/s.Rajendra Ship breakers Pvt. Ltd., Plot No. 114, Ship Breaking Yard, Sosiya, Trapaj ,District-Bhavnagar**

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में 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 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) 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) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असर्वा अहमदाबाद- 360016 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-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवाली, 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 मांग, ब्याज की मांग 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 क्रमशः 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 सार्वजनिक 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 मांग, ब्याज की मांग 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 क्रमशः 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 सार्वजनिक 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 fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is upto 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 Form 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 होगी। /

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, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, 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 in 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 छुट (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 क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए हैं। /

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।

जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 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 आदेशों 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 पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय 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 Appellate 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-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /

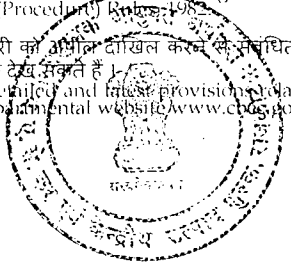
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

- (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 governing these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

- (G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने के संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbec.gov.in](http://www.cbec.gov.in) को देख सकते 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](http://www.cbec.gov.in)



**:: ORDER-IN-APPEAL ::**

M/s. Rajendra Ship Breakers Pvt. Ltd., Bhavnagar (*hereinafter referred to as "Appellant"*) has filed appeal Nos. V2/34-35/BVR/2019 against Order-in-Original No. 06 to 07/Service Tax/2018-19 dated 08.03.2019 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Central GST Division, Bhavnagar-I (*hereinafter referred to as 'adjudicating authority'*).

2. The brief facts of the case are that during audit of the records of the Appellant, it was observed that the Appellant had cleared goods from their factory and paid freight to transport agency. It appeared that since it is the consignor i.e. Appellant who had paid the freight charges, the liability to pay service tax under GTA service was upon Appellant in terms of Rule 2(1)(d)(B) of the Service Tax Rules, 1994.

2.1 Show Cause Notice dated 21.07.2017 covering the period from February, 2015 to March, 2016 and another Show Cause Notice dated 12.04.2018 covering the period from April, 2016 to June, 2017 were issued to the Appellant, for recovery of service tax of Rs. 20,38,956/- & Rs. 13,46,355/- respectively under the provision of Section 73(1) of the Finance Act, 1994 (*herein after referred to as "the Act"*), along with interest under Section 75 of the Act and proposing imposition of penalties under Sections 76, 77 & 78 of the Act.

2.2 The adjudicating authority confirmed service tax demand totally amounting to Rs. 33,85,311/- under Section 73(1) of the Act, along with interest under Section 75 and imposed penalty of Rs. 20,38,956/- under Section 78, penalty of Rs. 1,34,636/- under Section 76 and penalty of Rs. 10,000/- under Section 77(2) of the Act.

3. Aggrieved, the Appellant preferred these appeals, *inter-alia*, on the grounds as under:

(i) The Appellant removed excisable goods from the registered factory gate to the independent customers through the vehicles being sent by the purchaser as well as also sold excisable goods through appointed consignment sales agent as per the provisions of the Section 4 of the Central Excise Act, 1944 read with the provisions of Rule 5 of the Valuation Rules. Appellant used to bear "actual freight charges/ transportation charges" incurred in transporting of excisable goods from the place of the factory gate upto place of appointed consignment



*[Handwritten signature]*

sales agent. On sale of the said excisable goods by the appointed consignment sales agent, they used to issue required "Sale Note" to the independent customers, who were not related to each other; that the department has wrongly and without any authority of law has initiated illegal action for demand of the Service Tax on the transportation charges which were nothing but part and partial of the transaction value, as contemplated under Section 4 of the said Valuation Rules; that the Government cannot recover/collect "two indirect taxes", one is in the nature of Central Excise duty and another in the nature of Service Tax with reference to the issue of "transportation of the excisable goods"

(ii) Appellant used to pay Central Excise duty on the transaction value which included freight charges incurred in removing the excisable goods from factory gate of Appellant up to the place of the registered consignment sales agent's premises. Therefore, appellant was not required to pay the Service Tax on such freight charges shown separately in the "Consignment Sales Note" issued by the registered consignment sales agent. Similar type of action was also initiated in the case of the appellant pertaining to the period prior to the period involved in the above mentioned two show cause notices, wherein the Assistant Commissioner, Service Tax Division, Bhavnagar accepted the submission made by the appellant and admitted that no service tax levied on freight charges, because the same was included in the "transaction value" by the appellant as provided under Section 4 of the Act read with the Valuation Rules. The adjudicating authority erred in not giving due respect to the said provisions and not accepting the settled judicial discipline; that the department has tried to divert the issue from the angle of Central Excise Law to the angle of Service Tax Law though service tax law was not all applicable in the present case; that when the excisable goods are not sold at the factory gate, but are sold through the consignment sale agent, the place of removal of such excisable goods would be the place of the consignment sales agent's godown; that the appellant paid duty of excise, on value of goods declared in central excise invoice which included the actual amount of freight, incurred in removal of goods from the place of the factory gate up to the place of the appointed consignment sales agent, complying Section 4 read with Rule 5 of the Valuation Rules, 2000; that appellant has disclosed the manner of transaction done, through Sale Note No. 1852 dated 30.03.2013 issued by the consignment sales agent i.e. M/s. Bhadrakali Steels, G. T. Road, Sirhind Side, Mandi, Gobindgarh, Punjab with reference to the excisable goods transferred to the place of consignment sales

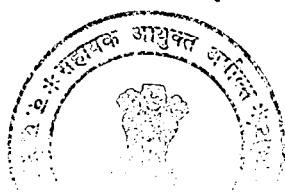
agent vide Central Excise Invoice No. EX 691 dated 22.03.20 13 and paid the duty accordingly.

(iii) The findings given at Para no. 30 & 31 of the impugned order are not sustainable, true and correct but far away from the statutory provisions of determining the correct and genuine transaction value in respect of the excisable goods sold to the customers from the place of registered place of consignment sales agent; that the Adjudicating Authority has grossly misinterpreted the Rules and Regulations of the excise law read with the provisions of the Finance Act, 1994; that the provisions of Rule 2(1)(d)(B) of the Service Tax Rules, 1994 are not applicable in the present case when goods are sold through consignment sales agent, wherein the "place of removal of the goods" is the place of godown of consignment sales agent and the cost of such transportation from the factory gate to the place of the consignment sales agent is to be treated as "the transaction value" in pursuance of the Section 4 of the Central Excise Act, 1944 read with the provisions of the Central Excise Valuation Rules framed there under that the impugned order demanding service tax is not proper, legal and correct, accordingly, appellant is not liable for, paying service tax, interest and penal action.

4. In Hearing, Shri N K Maru, & Shri U H Qureshi, both Consultants appeared on behalf of the Appellant and reiterated the submissions of appeal memo and also submitted additional submission dated 28.08.2019 wherein they reiterated the grounds of appeal.

5. I have carefully gone through the facts of the case, the impugned order, the Appeal Memorandum and written submission made by the Appellant. The issue to be decided is whether the Appellant is liable to pay service tax under the 'GTA Service' or otherwise.

6. On going through the records, I find that the adjudicating authority confirmed service tax demand under the category of 'GTA Service' on the grounds that the Appellant had paid freight to transport agency in respect of goods transported to their buyers and Appellant being a body corporate, they are liable to pay service tax in terms of Rule 2(1)(d)(B) of the Service Tax Rules, 1994. On the other hand, the Appellant has contended that, they had incurred freight charges/ transportation charges for transportation of excisable goods



*W*

from their factory, which was included in assessable value for the purpose of discharging Central Excise duty in terms of Section 4 of the Central Excise Act, 1944; that the Department cannot recover/collect two indirect taxes, one in the form of Central Excise duty and another in the form of Service Tax with reference to the issue of transportation of the excisable goods.

7. I find it is pertinent to examine the provisions contained in Rule 2(1)(d)(B) of the Service Tax Rules, 1994, which are reproduced as under:

“(d) “person liable for paying service tax”, -

...

(B) in relation to service provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—

- (I) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
- (II) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;
- (III) any co-operative society established by or under any law;
- (IV) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;
- (V) any body corporate established, by or under any law; or
- (VI) any partnership firm whether registered or not under any law including association of persons;

any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage :”

7.1 I find that in the present case, the Appellant was consignor of goods who had paid freight to the transport agency in respect of goods sold and transported to their buyers. Further, the Appellant, being a private limited company, is covered under sub clause(V) *supra*. These facts are not in dispute. Under the circumstance, liability to pay Service Tax on ‘GTA service’ is upon the Appellant as provided under Rule 2(1)(d)(B) reproduced *supra*. Thus, the Appellant was rightly held liable to pay service tax on the freight amount under ‘GTA Service’.

8. The Appellant has contended that they had incurred freight charges/ transportation charges for transportation of excisable goods from their factory, which was included in assessable value for the purpose of discharging Central Excise duty in terms of Section 4 of the Central Excise Act, 1944; that the



*a*

Department cannot recover/collect two indirect taxes, one in the form of Central Excise duty and another in the form of Service Tax with reference to the issue of transportation of the excisable goods. I find that the Appellant included freight amount in assessable value for the purpose of discharging Central Excise duty in pursuance of provisions contained in Central Excise duty. While in the present case, the Appellant has been held liable to pay Service Tax on the freight amount pursuant to provisions contained in Service Tax Rules, 1994. Thus, liability to pay Central Excise duty and Service Tax have arose under two different statutes and the Appellant cannot escape from discharging their liability to pay service tax on freight amount paid to transport agency under 'GTA Service' on the ground that they had already discharged Central Excise duty on the freight amount by including it in assessable value. I, therefore, discard this contention as devoid of merit.

9. In view of above, I hold that the Appellant is liable to pay service tax under 'GTA Service'. I uphold the impugned order confirming service tax demand of Rs. 33,85,311/-. Since, Service Tax is confirmed, it is natural that confirmed Service Tax is required to be paid along with interest at applicable rate.

10. Regarding penalty imposed under Section 78 of the Act, I find that non payment of service tax under 'GTA service' by the Appellant was unearthed during Audit undertaken by the Department. Had there been no Audit of the records of the Appellant, the non payment of service tax by the Appellant under 'GTA Service' would have gone unnoticed. So, there was suppression of facts and extended period of limitation was rightly invoked in the impugned order. Since the Appellant suppressed the facts of non-payment of Service Tax, penalty under Section 78 of the Act is mandatory as has been held by the Hon'ble Supreme Court in the case of Rajasthan Spinning & Weaving Mills reported as 2009 (238) E.L.T. 3 (S.C.), wherein it is held that when there are ingredients for invoking extended period of limitation for demand of duty, imposition of penalty under Section 11AC is mandatory. The ratio of the said judgment applies to the facts of the present case. I, therefore, uphold penalty of Rs. 20,38,956/- imposed under Section 78 of the Act.

11. Regarding penalty imposed under Section 76 of the Act, I find that the Appellant was liable to pay service tax under 'GTA Service' but they failed to



discharge their service tax liability and hence, they are liable to penalty under Section 76 of the Act. I, therefore, uphold the penalty of Rs. 1,34,636/- imposed under Section 76 of the Act.

12. Regarding penalty imposed under Section 77(2) of the Act, I find that it is a fact that the Appellant had failed to assess service tax they were liable to pay under the category of 'GTA Service' and therefore, penalty of Rs. 10,000/- imposed under Section 77(2) of the Act is required to be upheld and I do so.

13. In view of above, I uphold the impugned order and reject the appeals.

सत्यापित,

*(Signature)*

विपुल शाह

अधीक्षक (अपील्स)

*(Signature)*  
(GOPI NATH)  
Commissioner(Appeals)

By RPAD

To,

M/s. Rajendra Ship Breakers Pvt. Ltd., Work: Plot No. 114, Ship Breaking Yard, Sosiya, Trapaj, District Bhavnagar.	मैसर्स राजेंद्र शिप ब्रेकर्स प्रा. लिमिटेड, फ़ैक्टरी: प्लॉट नंबर 114, शिप ब्रेकिंग यार्ड, सोसिया, ट्रैपज, जिला। भावनगर।
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प्रतिलिपि :-

- 1) प्रधान मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर-1 मण्डल, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- ✓ 4) गार्ड फ़ाइल।

