::प्रधानआयुक्त (अपील्स) का कार्यालय,वस्तु एवं सेवा करऔरकेन्द्रीय उत्पाद शुल्क::
O/O THE PRINCIPAL COMMISSIONER (APPEALS), GST &CENTRAL 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 – 2477952/2441142Email: cexappealsrajkot@gmail.com

सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा :-

क	अपील / फाइलसंख्या/ Appeal /File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/31 /GDM/2018-19	06/AC/Mundra/2017-18	26-03-2018

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

KCH-EXCUS-000-APP-076-2019

आदेश का दिनांक / Date of Order:	11.07.2019	जारी करने की तारीख / Date of issue:	12.07.2019

श्री कुमार संतोष, प्रधानआयुक्त (अपील्स), राजकोट द्वारा पारित /

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 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**Appellant**&Respondent :-

Saurashtra Infra & Power Pvt. Ltd., Bharat CFS, Zone-I, Adani Port Road, Mundra, Kutch-370421

इस आदश(अपील) स व्यथित काइ व्यक्त निम्नलोखित तराक म उपयुक्त प्राधिकारा / प्राधिकरण क समक्ष अपील दायर कर सकता ह।/
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 एव सवाकर अपीलीय न्यायाधिकरण क प्रात अपील, केन्द्रीय उत्पाद शुल्क आधीनयम ,1944 का धारा 35B क अतगत 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 अपीलें सीमा शुल्क,केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट)की पश्चिम क्षेत्रीय पीठिका,,द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- ३८००१६को की जानी चाहिए ।/

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016in 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)नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 का 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 रजिस्ट्रार क 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 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, 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 रजिस्ट्रार 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 Commissionerauthorizing 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" मे 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 अर्ज़ी 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 कोपुनरीक्षण आवेदन :**
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलो में, केंद्रीय उत्पाद शुल्क अधिनियम,1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर 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 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 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 क्रेडीट 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 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 ।
जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो 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 नयाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है । / In case, if the order covers variousnumbers 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.

(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट 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.

:: ORDER-IN-APPEAL ::

M/s Saurashtra Infra & Power Pvt. Ltd, Bharat CFS Zone 1, Adani Port Road, Mundra, Kutch, Gujarat-370421 having Service Tax Registration No. AAJCS0161NST001(*hereinafter referred to as* "Appellant") filed Appeal No. V2/31/GDM/2018-19 against Order-in-Original No. 06/AC/Mundra/2017-18 dated 26.03.2018(*hereinafter referred to as* 'impugned order') passed by the Assistant Commissioner, CGST Division Mundra, Gandhidham Commissionerate (hereinafter referred to as "lower adjudicating authority").

2. The brief facts of the case are that the Appellant was operating Container Freight Station (CFS) at Mundra and provided "Cargo Handling Services", "Storage and Warehousing Services", "Goods Transport Agency Service" and "Business Support Services". During the course of CERA Audit, it was found that the Appellant was running canteen in port premises where food was served on chargeable basis and income was booked under the head "canteen sales" during F.Y. 2013-14,2014-15 and 2015-16. It was alleged by Audit that Appellant had rendered canteen services within the port area and therefore, the services would fall under the purview of 'port services' in terms of Section 65(82) of the Finance Act, 1994 (herein after referred to as "Act") read with Section 65(105)(zn) of the Act and the Appellant was liable to pay service tax.

2.2 Show Cause Notice No. V/15-06/Mundra/ADJ/2017-18 dated 08.11.2017 was issued calling the Appellant to show cause as to why Service Tax of Rs. 22,05,134/- should not be demanded and recovered under Section 73(1) of the Act, along with interest under Section 75 of the Act and also proposed penalty under Sections 76,77 and 78 of the Act.

2.3 The above Show Cause Notice was adjudicated vide the impugned order, which confirmed Service Tax of Rs. 22,05,134/- and ordered for its recovery under Section 73(1) of the Act. along with interest under the Section 75 of the Act and imposed penalty of Rs. 10,000/- Section 77 and Rs. 22,05,134/- under Section 78 of the Act.

3. Being aggrieved with the impugned order, the Appellant has

preferred appeal on the grounds, *inter alia*, as below :-

(i) The appellant is a Container Freight Station, and has been providing the facility of canteen for the visitors and staff of the CFS, which is a mandatory clause. They have shown this income in their balance sheet but not in their ST-3 returns because they think that this service is exempted from service tax as per clause 19 of exemption Notification No. 25/2012-ST dated 20.6.2012 since their canteen is not air conditioned.

(ii) The said canteen is in a public place, therefore suppression cannot be alleged and extended period of limitation cannot be invoked and relied upon case law of R. P. Shah - 2016(42) STR 839 (Tri Mumbai) duly affirmed by the Hon'ble Supreme Court in 2016(44) STR J214 (SC).

(iii) The port services are provided by the port authorities, or a person authorized by them. In the present case, the appellant provided canteen service within CFS which is mandatory obligation and cannot be covered under 'Port Service'.

4. Personal Hearing were fixed in the case on 18.3.2019, 2.4.2019, 18.4.2019, 5.5.2019 and 4.6.2019. However, neither any response/reply came nor any person appeared on behalf of the Appellant on any of the given five dates or on any date thereafter. Hence, I take up this appeal for decision on the basis of available records and the grounds of Appeal as the Appellant has been given sufficient opportunities to represent their case but they failed to avail opportunities given to them.

Findings:

5. I find that the Appellant has complied with the provisions of Section 35F of the Act by depositing Rs. 1,65,385/- @7.5% of Rs. 22,05,134/- vide Challan No. 00084 dated 5.5.2018, as declared by them in Appeal Memorandum and the Commissionerate has not sent any report contradicting their claim.

6. I have carefully gone through the facts of the case, the impugned order and the grounds of appeal submitted by the appellant in the memorandum of appeal. The issue to be decided is whether the impugned

order, in the facts of this case, is correct, legal and proper or not.

7. On going through the records, I find that the Appellant was operating Container Freight Station (CFS) at Mundra; that the Appellant was also running a canteen in their premises where food was being served to staff of CFS, visitors etc. on the chargeable basis. The Adjudicating authority has held that since this service was rendered within the port area, the Appellant was liable to pay service tax under 'port service' in terms of Section 65(82) of the Act read with Section 65(zn) *ibid*. The Appellant in the Appeal Memorandum has mainly contended that their canteen is not air conditioned and hence, they are exempted from service tax in terms of clause 19 of Notification No. 25/2012-ST dated 20.6.2012, as amended.

8. I find it is pertinent to examine the term 'Port Service' defined under Section 65(82) of the Act, which reads as under:

> "port service" means any service rendered within a port or other port, in any manner;
>
> (Emphasis Supplied)

8.1 Further, the terms 'taxable service' is defined under Section 65(105)(zn) of the Act, as under:

> "to any person, by any other person, in relation to port services in a port, in any manner :
> Provided that the provisions of section 65A shall not apply to any service when the same is rendered wholly within the port;"

8.2 The above definition is clear and unambiguous. Any service provided within a port is covered under the definition of 'Port Service' and the definition says that provisions of Section 65A of the Act shall not apply when the same is rendered wholly within the port. In the present appeal, the Appellant has not disputed that they operate within the port of Mundra, also that they serve food to their staff and visitors in their canteen situated within the port and has collected charges. All these facts are not disputed by the Appellant, hence, in my view the service provided for serving food in canteen within port area is covered under 'Port Service' by virtue of provisions of Section 65(82) of the Act reproduced

supra and the Appellant is liable to pay service tax on consideration received in this regard.

8. Regarding contention of the Appellant that their canteen is not air conditioned and hence, they are exempted from service tax in terms of clause 19 of Notification No. 25/2012-ST dated 20.6.2012, as amended, I find it is pertinent to examine clause 19 of Notification No. 25/2012-ST dated 20.6.2012 as under:

> "19. Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year;"

9. As per records, the Appellant was running canteen for serving food to their staff. As per Cambridge dictionary, 'canteen' is defined as :

> "a place in a factory, office, etc. where food and meals are sold, often at a lower than usual price"

9.1 In view of above definition, canteen can not be said to be a restaurant, an eating joint or a mess and hence, canteen run by the Appellant is not covered by clause 19 reproduced *supra*. The Appellant is, therefore, not eligible for exemption from service tax under Notification No. 25/2012-ST dated 20.6.2012. I, therefore, hold that the Appellant is liable to pay service tax on income booked under the head 'Canteen Sales' and the impugned order confirming demand of service tax of Rs. 22,05,134/- along with interest at applicable rate is correct, legal and proper.

10. The Appellant has contended that since canteen is in a public place, suppression cannot be alleged and extended period of limitation cannot be invoked. I find that Section 68 of the Act casts liability on the service providers to make payment of service tax on the taxable services rendered by them. Merely because canteen is situated in a public place, it is not correct to presume that the Appellant has not suppressed the facts from the Department, when providing of food etc. to their staff was not brought to the notice of the jurisdictional Service Tax Range/ Division office and also not reflected in their Service Tax Returns. It is on record

that non payment of service tax on this account was revealed only during audit of the records of the Appellant. Had there been no audit of the Appellant's records, the non payment of service tax on income booked by the Appellant in this regard would have gone unnoticed and hence, ingredients for invoking extended period under Section 73 of the Act very much exist in the present case. Accordingly, I hold that the demand is not barred by limitation. In this regard, I rely on the order passed by the Hon'ble CESTAT, Chennai in the case of Six Sigma Soft Solutions (P) Ltd. reported as 2018 (18) G.S.T.L. 448 (Tri. - Chennai), wherein it has been held that,

> "6.5 Ld. Advocate has been at pains to point out that there was no *mala fide* intention on the part of the appellant. He has contended [that] they were under the impression that the said activities would come within the scope of IT services, hence not taxable. For this reason, Ld. Advocate has contended that extended period of time would not be invocable. However, we find that the adjudicating authority has addressed this aspect in para-10 of the impugned order, where it has been brought to the fold that appellant had not at all disclosed the receipt of income in respect of the activities done by them in respect of services provided by them in their ST-3 returns.
>
> 6.6 The facts came to light only when the department conducted scrutiny of the annual reports, possibly during audit. In such circumstances, the department is fully justified in invoking the extended period of limitation of five years."

(Emphasis supplied)

10.1 Since, suppression of facts has been made by the Appellant, penalty under Section 78 of the Act is mandatory. The Hon'ble Apex Court in the case of Rajasthan Spinning & Weaving Mills reported as 2009 (238) E.L.T. 3 (S.C.) has held that once ingredients for invoking extended period of limitation for demand of duty exist, imposition of penalty under Section 11AC is mandatory. The ratio of the said judgment is applicable to the facts of the present case. I, therefore, uphold penalty of Rs. 22,05,134/- imposed under Section 78 of the Act.

11. In view of above, I uphold the impugned order and reject the appeal.

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

12. The appeal filed by the Appellant is disposed off as above.

11/2/2019

(कुमार संतोष)
प्रधान आयुक्त(अपील्स)

सत्यापित,

विपुल शाह
अधीक्षक (अपील्स)

By R.P.A.D.

To, M/s Saurashtra Infra & Power Pvt. Ltd, Bharat CFS Zone 1, Adani Port Road, Mundra, District Kutch.	सेवामें, मे॰ सौराष्ट इन्फ्रा & पावर प्राइवेट लिमिटेड, भारत सीएफ़एस ज़ोन 1, अदानी पोर्ट रोड, मुँदरा, जिल्ला कच्छ।

प्रति :-

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,कच्छ आयुक्तालय,गांधीधाम को आवश्यक कार्यवाही हेतु।
3) सहायक आयुक्त,सीजीएसटी डिविजन मुँदरा,को आवश्यक कार्यवाही हेतु।
4) गार्ड फ़ाइल।