



::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::
O/O THE 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

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रजिस्टर्ड डाक ए.डी.द्वारा :-

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/60/GDM/2018-19	09 & 10/JC/2018-19	04-10-2018

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

KCH-EXCUS-000-APP-099-2019

आदेश का दिनांक / Date of Order:	20.11.2019	जारी करने की तारीख / Date of issue:	28.11.2019
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श्रीगोपी 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 एवं सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST,
Rajkot / Jamnagar / Gandhidham :

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

Jay Ambica Exim Plot No 104, Sector-08, Near Madhuban Cinema, Gandhidham (Kutch)-370201

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 असावा अहमदाबाद- 380016 को की जानी चाहिए। /

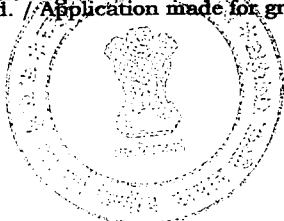
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की 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 fees of Rs. 1000/- 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 दजे 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 रूप 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 होगा।/
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 पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सर्चिव, 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 इयूटी 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 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 पदवी 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 Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed 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. Jay Ambica Exim (hereinafter referred to as "Appellant") filed appeal No. V2/60/GDM/2018-19 against Order-in-Original No. 9 & 10/JC/2018-19 dated 4.10.2018 (hereinafter referred to as 'impugned order') passed by the Joint Commissioner, Central GST, Gandhidham (Kutch) (hereinafter referred to as 'adjudicating authority').

2. The brief facts of the case are that investigation carried out by the Preventive Wing, Central Excise, Rajkot revealed that the Appellant was providing various services viz. Cargo handling service, transportation of goods by road, supply of tangible goods service, and was collecting service tax but not depositing the same to the exchequer. Shri Shivam Niranjnlal, Partner of the Appellant in his Statement, *inter alia*, admitted that they had provided the said services, but not deposited any service tax from 1.04.2012 to the date of visit of the officers i.e. 8.3.2013; that they had filed returns only upto March-2012; that due to shortage of funds, they could not deposit service tax for the period from April, 2012 to December, 2012 even after collecting the same from the customers. On culmination of investigation, Show Cause Notices were issued covering the period from 2008-09 to 2014-15. For the subsequent period, on scrutiny of documents submitted by the Appellant, it was found that the Appellant had failed to discharge service tax on full income and had short paid service tax. Consequently, following Show Cause Notices were issued for the period under dispute:

Sr. No.	Show Cause Notice No.	Date	Period covered
1.	V.ST/STR1 -GIM/Div.GIM/Jt. Commr./ 32/2016-17	30.03.2017	2015-16
2.	Jt. Commr. JH/03/2018-19	20.04.2018	2016-17

2.1 The above Show Cause Notices were issued to the Appellant calling them to show cause as to why service tax amounting to Rs. 1,39,78,671/- (Sr. No.1 above) & Rs.1,65,43,324/- (Sr. No. 2) should not be demanded and recovered from them under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as "Act"), along with interest under Section 75 of the Act; proposing imposition of penalty under Section 76 & 77 of the Act; late fee of Rs.32,500/- for failure to file ST-3 return in due time under section 70 of the Act read with Rule 7C of the Service Tax Rules, 1994 (herein after referred to as "Rules").



2.2 The above SCNs were adjudicated by the adjudicating authority vide the impugned order, wherein he confirmed demand of service tax amounting to Rs. 1,39,78,671/- & Rs. 1,65,43,324/- under proviso to Section 73(1) of the Act and ordered to recover interest under Section 75 of the Act; imposed penalty of Rs.30,52,199/- under Section 76 of the Act; ordered to recover late fee of Rs.32,500/- for failure to file ST-3 return in due time under section 70 of the Act read with Rule 7C of the Rules.

3. Aggrieved, the Appellant preferred this appeal, *inter-alia*, on the various grounds as under:

(i) The adjudicating authority without going into the activities and without verifying the documents, confirmed the demand as the same was done in earlier show cause notices; that they provided services of transportation falling under the category of GTA service. However, when the show cause notice was issued, it was never mentioned that the particular amount of service tax was not be paid under any specific category of service; that the impugned order covers show cause notices which are based on the first SCN in the series of periodical show cause notices; that after going through paragraph 10 of the first SCN dated 22.10.2013, it may be seen that the only confusion/doubt for the show cause notice issuing authority was that Appellant could not establish as to whether the service recipient have paid service tax or not; that in SCN there was no doubt or allegation that the services provided were of 'cargo handling services', rather it was considered as transportation service. However, the lower adjudicating authority in his findings changed the classification from GTA to cargo handling service, though this is not explicitly mentioned in the order portion.

(ii) The impugned order was issued beyond the scope of original SCN as there was no proposal in the SCNs to change the classification of service of goods Transportation Agency to Cargo Handling Service. However, the adjudicating authority, with an intention to confirm the demand changed the classification in his findings, which is against the principal of natural justice and not permissible in law. The Appellant relied upon following case laws in support of their contention:

- a) Balaji Contractor -2017 (52) S.T.R. 259 (Tn. - Del.)
- b) Gurbachan Singh- 2017 (52) S.T.R. 176 (Tn. - All.)
- c) Marubeni India Pvt. Ltd. - 2018 (8) G.S.T.L. J143 (S.C.)

(iii) That the Appellant is engaged in transporting goods from port to various



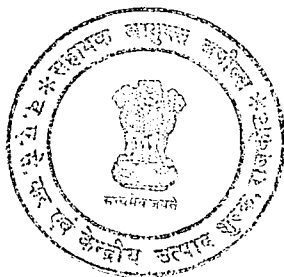
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factories and without any evidence the same was categorized under cargo handling service; that Section 65(23) of the Act clearly defines that cargo handling service does not include mere transportation of goods, whereas the Appellant's main activity was shifting goods from one place to another; that they had not provided any loading/ unloading facility of goods by their labourers, which can be explicitly seen from the invoices issued during the relevant period; that they had never provided any ancillary services during the course of transportation; that consignment notes and invoices having details similar to consignment note receipts were issued; that Board's Circular no. 104/7/2008-S.T, dated 6-8-2008 issued from F. No. 137/175/2007-CX.4, which reflects pragmatic orientation of the Board to clear the air of confusion regarding GTA service, and Tax Research Unit's clarification F.No.B1 1/1/2002 TRU date 01.08.2002 may be referred and also relied upon following case laws:

- a) HEC Ltd.- 2018 (9) G.S.T.L. 403 (Tn. - Kolkata)
- b) Jhabballal Manilal -2018 (9) G.S.T.L. 98 (Tn. - Del.)
- c) United Cargo Transport Services -2017 (4) G.S.T.L. 319 (Tn. - Chennai)
- d) Drolia Electrosteels (P) Ltd.- 2016 (43) S.T.R. 261 (Tn. - Del.)

(iv) That the ingredients required to qualify as GTA service are present in the instant case; that LR's with details required to be mentioned in the LR's/consignment notes, were issued in each and every case; that due to very large volume of work on daily basis, though LR's were issued truck wise, bills for payment were prepared after a particular work was completed and a separate bill covering all those consignments was issued; that number of invoices were in thousands and each such invoices covered about 10-20 LR's; that providing copies of all such documents was not practically feasible. Accordingly, sample copies of such documents were provided and all the supporting documents were placed to correlate with those LR's and bills.

(v) In case of GTA, service tax is to be paid by the recipient as per Rule 4(1)(d)(v) of the Rules; that the status of clients/service receiver was submitted with the letter dated 01.05.2017 along with ledgers and invoices from which it was easily verifiable that the service recipients were very big companies and they were liable to pay service tax as per Rule 4(1)(d)(v) of the Rules. Even certificates from such service receivers were also submitted to the effect that they were liable to pay service tax and that they had already paid service tax on the value of services received as per notification No. 01.03.2008; that when service tax has already been paid by the recipient of service, demand of service



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tax on the service provider amounts to double taxation.

(vi) That extended period of limitation can be invoked only in a case where the service tax has not been paid on account of fraud, collusion, willful misstatement and suppression of facts with an intention to evade tax. It is very evident that the said circumstances are not established in the instant case. The issue involved is whether service tax is payable for the alleged services rendered by the Appellant; that where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression. There could be various reasons for non-payment of service tax, such as, if the Appellant is under the bonafide belief that he is not required to pay the service tax either relying upon the decisions of various courts or by virtue of trade practice. Therefore, larger period of limitation was illegally and erroneously invoked against the appellant. Thus proposed demand is barred by limitations.

4. In hearing, Shri R.C.Prasad, Consultant appeared on behalf of the Appellant and reiterated the submissions of appeal memo and also filed additional submission dated 04.09.2019, wherein grounds of appeal memo are reiterated.

5. I have carefully gone through the facts of the case, the impugned order, the Appeal Memorandum and written submissions made by the Appellant. The issue to be decided is whether the service tax amounting to Rs. 1,39,78,671/- & Rs. 1,65,43,324/- demanded from the Appellant is correct or otherwise.

6. On going through the records, I find that the adjudicating authority confirmed service tax demand on the ground that the Appellant had rendered 'Cargo Handling Service' and liable to pay service tax on the income received by them; that the Appellant had failed to produce documentary evidences to prove that they had rendered 'Transportation of Goods Service' as GTA. On the other hand, the Appellant contended that ingredients required to qualify services rendered by them as GTA service are present in the instant case; that LRs were issued in each and every case but due to very large volume of work on daily basis, providing copies of all such documents was not practically feasible; that in case of GTA, service tax is to be paid by the recipient as per Rule 4(1)(d)(v) of the Rules, which has also been paid by the service recipient; that when service tax has already been paid by the recipient of service, demand of service tax on



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the service provider amounts to double taxation

7. I find it is pertinent to examine the term 'Cargo Handling Service' defined under Section 65(23) of the Act as under:

“(23) “cargo handling service” means loading, unloading, packing or unpacking of cargo and includes, —

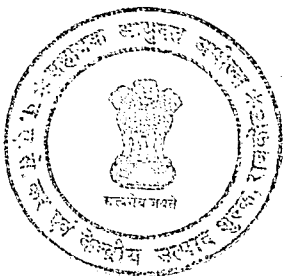
- (a) cargo handling services provided for freight in special containers or for non-containerised freight, services provided by a container freight terminal or any other freight terminal, for all modes of transport, and cargo handling service incidental to freight; and
- (b) service of packing together with transportation of cargo or goods, with or without one or more of other services like loading, unloading, unpacking,

but does not include, handling of export cargo or passenger baggage or mere transportation of goods;”

8. Now, I examine sample bills furnished by the Appellant in appeal memorandum to understand the exact nature of services rendered by the Appellant. On going through Bill No. JAE/2015-16/663 dated 19.2.2016, I find that description reads as “Being amount charged towards transportation of S-Coal from Mundra Port to Factory Bharapar”. The said bill was raised to M/s S.A.L. Steel Ltd showing quantity of 964.880 MTs purportedly for transportation of Coal from Mundra Port to consignee’s factory at Bharapar. It is apparent that for transporting consignment of 964.880 MTs of cargo, other incidental and ancillary services like logistic support at Port, loading and unloading cargo are also required for movement of cargo from Mundra Port to factory of consignee. Thus, it is safe to conclude that services rendered by the Appellant were not only transportation but also included loading and unloading of cargo. Thus, the services rendered by the Appellant were not mere transportation but also included loading and unloading of cargo and services would apparently covered under the category of 'Cargo Handling Service', as rightly held by the adjudicating authority.

9. The Appellant contended that ingredients required to qualify services rendered by them as GTA service are present in the instant case; that LRs were issued in each and every case but due to very large volume of work on daily basis, providing copies of all such documents was not practically feasible; that in case of GTA, service tax is to paid by the recipient as per Rule 4(1)(d)(v) of the Rules. I find it is pertinent to examine the provisions relating to GTA service as under:

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9.1 As per Section 65(50b) of the Act, the term 'Goods Transport Agency' is defined as under:

(26) "goods transport agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called;

9.2 As per Rule 4B of the Service Tax Rules, 1994, any 'goods transport agency' which provides service in relation to transport of goods by road in a goods carriage shall issue a consignment note to the recipient of Service. Further, the term 'consignment note' has been defined under Rule 4B *ibid* as under:

"Explanation. - For the purposes of this rule and the second proviso to rule 4A, "consignment note" means a document, issued by a goods transport agency against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains the names of the consignor and consignee, registration number of the goods carriage in which the goods are transported, details of the goods transported, details of the place of origin and destination, person liable for paying service tax whether consignor, consignee or the goods transport agency."

9.3 On combined reading of above provisions, it is clear that in order to get covered under 'Goods Transport Agency', it is imperative that such entity issues consignment note to recipient of service for transportation of goods by road in a goods carriage. On going through the impugned order, I find that the adjudicating authority has recorded findings that the Appellant failed to produce consignment note/L.R. to substantiate their claim of being GTA agency. As per the impugned order, the taxable income of the Appellant was Rs. 15,51,18,599/- and Rs. 16,81,42,995/- for the years 2015-16 and 2016-17 respectively. Despite such large income, the Appellant was not able to produce copies of any consignment notes/LRs neither before the adjudicating authority nor before this appellate authority. I have also gone through annexure attached with the bill dated 19.2.2016 referred *supra*, wherein details of cargo movement is given. I find that said consignment contained 964.880 MTs of cargo involving 31 trips of trucks during the period 3.2.2016 to 15.2.2016 from Mundra Port to Factory of consignee. However, the Appellant has not been able to furnish single consignment note/ L.R. Under the circumstances, the Appellant cannot be considered as 'Goods Transport Agency'. I, therefore, discard this contention of



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the Appellant as devoid of merit.

10. The Appellant contended that service recipients were liable to pay service tax as per Rule 4(1)(d)(v) of the Rules, which has also been paid by the service recipient; that when service tax has already been paid by the recipient of service, demand of service tax on the service provider amounts to double taxation. I find that the Appellant has not produced any consignment note, so the Appellant cannot be considered as 'Goods Transport Agency' as held by me in para *supra*. Since, the Appellant was not GTA agency, provisions of Rule 4(1)(d)(v) of the Rules will not come into picture. Regarding payment of service tax by recipient of service as claimed by the Appellant, I find that services rendered by the Appellant have been correctly classified by the adjudicating authority under 'Cargo Handling Service'. Hence, payment of service tax by recipient of service as claimed by the Appellant is not a reason/ justification for non payment of service tax by the Appellant under 'Cargo Handling Service'. I, therefore, discard this contention as devoid of merit.

11. The Appellant contended that larger period of limitation was illegally and erroneously invoked against the appellant. I find that both the Show Cause Notices were issued within normal period of limitation. Show Cause Notice for the year 2015-16 was issued on 30.3.2017 and Show Cause Notice for the year 2016-17 was issued on 20.4.2018. Thus, both the Show Cause Notices were issued within normal period of limitation prescribed under Section 73(1) of the Act and larger period of limitation was not invoked in either of the two Show Cause Notices. Thus, the contention of the Appellant is contrary to facts.

12. In view of above, I uphold confirmation of service tax demand of Rs. 3,05,21,995/- under Section 73(1) of the Act. Since, service tax demand is upheld, it is natural consequence that confirmed service tax is required to be paid along with interest at applicable rate under Section 75 of the Act.

13. Regarding penalty imposed under Section 76 of the Act, I find that the Appellant has not paid service tax of Rs. 3,05,21,995/- which has been confirmed under Section 73(1) of the Act. Hence, the Appellant is rightly held liable for penalty under Section 76 of the Act. I, therefore, uphold penalty of Rs. 30,52,199/- under Section 76 of the Act.

14. Regarding late fees of Rs. 32,500/- imposed under Section 70 of the Act, I



find that the Appellant had failed to file prescribed ST-3 returns for the period April-Sept, 2016 and October-March, 2017 within due date as narrated in Para 34 of the impugned order. Hence, the Appellant has been rightly held liable for late fees under Section 70 of the Act. I, therefore, uphold late fees of Rs. 32,500/- under Section 70 of the Act.

15. In view of above, I uphold the impugned order and reject the appeal.
16. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
16. The appeal filed by the Appellant is disposed off as above.

Alal
(GOPI NATH) 20/7/19
Commissioner(Appeals)

Attested

VS

(V.T.SHAH)
Superintendent(Appeals)

By RPAD
To

M/s. Jai Ambica Exim, Plot No. 104, sector-08, Near Madhuban Cinema, Gandhidham (Kutch) - 370201	मैसर्स जय अम्बिका एक्जिम, प्लॉट नंबर 104, सेक्टर 08- मधुबन सिनेमा के पास, गांधीधाम 370201 - (कच्छ)
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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, गांधीधाम आयुक्तालय, गांधीधाम को आवश्यक कार्यवाही हेतु।
- 3) संयुक्त आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गांधीधाम आयुक्तालय, गांधीधाम, को आवश्यक कार्यवाही हेतु।

✓ 4) गार्ड फाइल।

