



::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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सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा :-

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/92/RAJ/2019	AC/JAM-I/ST/03/2019-20	15-04-2019

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

RAJ-EXCUS-000-APP-026-2020

आदेश का दिनांक /
Date of Order: **04.02.2020** जारी करने की तारीख /
Date of issue: **06.02.2020**

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 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 **Appellants** & Respondent :-

M/s Sea Shipping Services, A-1, Prabhukrupa Society, Opp. St Gregorious School, Jamnagar-361002.

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 (सिस्टट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहमाली भवन असावा अहमदाबाद- ३८००१६ 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) 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 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 क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति सलग करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार 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 सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में सलग 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 क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति सलग करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार 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 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 की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकती एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रामाणित 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 of 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, के अन्तर्गत भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), कुवन्त जमा के अन्तर्गत विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जमाने वाली अंशित कर राशि दस करोड़ रुपये से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "प्रॉग्रसिव टैक्स 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 (नं० 2) अधिनियम, 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थान 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 पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजन्व विभाग, जेवन 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 भेजा निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
(iv) मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट प्रदान अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं० 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 उत्पाद 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 साध्य 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।
जहां 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, notwithstanding 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 scripps & 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 स्थान आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट 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. Sea Shipping Service (herein after referred to as "**Appellant**") filed present appeal against Order-in-Original No. AC/JAM-I/ST/03/2019-20 dated 15.04.2019 (hereinafter referred to as '**the impugned order**') passed by the Assistant Commissioner, Central GST, Division-I, Jamnagar, (hereinafter referred to as '**the adjudicating authority**'):-

2. The brief facts of the case are that audit of the records of the appellant for the period from Oct-12 to March-17 revealed that the appellant supplied fresh water and bunker to the vessels through tug/barges/tankers; that the appellant did not pay service tax on the supply of water and bunker to the vessels. Since, said service falls under the category of port service, the appellant was required to charge and pay the service tax on the same. Therefore, the appellant was issued a Show Cause Notice dated 03.08.2018 asking the appellant as to why service tax of Rs.38,66,707/- should not be demanded under section 73(1) of the Finance Act, 1994 (hereinafter referred to as '**the Act**') along with interest under Section 75; proposing penalty under section 76, 77 & 78 of the Act.

2.2 The said SCN was confirmed by the lower adjudicating authority vide impugned order, confirming demand of service tax of Rs.38,66,707/- along with recovery of interest and imposition of penalty of Rs.10,000/- under section 77 and penalty of Rs.38,66,707/- under section 78 of the Act. However, penalty under section 76 was dropped.

3. Being aggrieved with the impugned order, the appellant preferred the instant appeal, *inter-alia*, on the various grounds as under:

3.1 That entire figures pertaining to the sale of water and bunkers were taken from the books of accounts of the appellant which means appellant had no intention of suppression of the facts otherwise they would not have reflected the same in book of accounts; that demand raised under section 73(1) of the Act on the basis of suppression of facts is barred by time and not sustainable in law; that department cannot travel beyond normal



period of 18 months; that the appellant received the said SCN on 15.03.2019 therefore 18 months should be calculated from March-2019.

3.2 That the appellant was not served any personal hearing intimation; that by the time the appellant could submit any reply to the said SCN, the impugned order was passed by the lower adjudicating authority ex-parte, without giving opportunity to the appellant; that lapse on the part of the officers failing to deliver the letters / SCN in time, is in gross violation of the principles of natural justice, and hence such an order is not sustainable and is liable to be set aside.

3.3 That the amount received from the buyers of water has been booked in the books of accounts as "income from fresh water sales", "income from bunker sales". Therefore, such sales of water cannot be treated as provision of service so as to charge service tax. The appellant are also charging the Sales Tax / VAT on the sales of bunker on the entire value. Therefore, since the sale of bunker is sale on which sales tax is charged, the same cannot be treated as service for the purpose of charging service tax. Further, sale of water is unconditionally exempted from sales tax/VAT by sub section 1 of section 5 of Gujarat VAT Act, 2005 listed at Sr. No. 53 of Schedule I of Gujarat VAT Act, 2005

3.4 That the appellant had correctly described Fresh Water, showing the quantity and price per M.T of fresh water sold to their consignees and the value of the water included transportation charges of Tankers/Barges, pumping charges and profit margin only; that the appellant had not charged any separate service charge for supply of water on board of any vessel; that the lower adjudicating authority misinterpreted sale of water as supply of water.

3.5 That they are purchasing water and supplying the same on back to back basis to the ship-owners and getting the cost of water reimbursed from the ship-owners under proviso (vi) & (vii) of Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006; that they have shown in the vouchers all such reimbursable expenses separately and recovered from the buyers of water.



3.6 That definition of 'port services' as given under Section 65(105)(zn) of the Act clearly mentions about levy of service tax on any service rendered by a port or other port or any person authorized by such port or other port, and such service should be in relation to a vessel or goods, whereas, in the present case, admittedly, the appellant was neither a port nor other port nor authorized by a port or other port and therefore, demanding the service tax under the said taxable category was without authority of law.

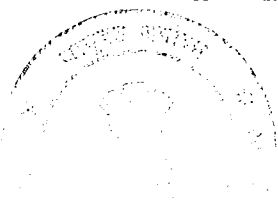
3.7 That the penalty under Section 77 of the Finance Act, 1994 is not imposable on them as they were already registered under the Service Tax /provisions and were also filing periodical returns within the prescribed time limit for other taxable services. The appellant also submitted that they had not contravened any of the provisions of the Finance Act, 1995 as they had not rendered any taxable services on which service tax was not paid.

3.8 That they had declared the amounts of sale of water in their books of accounts and also declared to the income tax department in their balance sheets, therefore penal action under Section 78 of the Act is unwarranted and should be dropped.

3.9 In support of their contention the appellant relied upon the judgment in the case of ICC Realty (India) Pvt Ltd Vs CCE [2013(32) STR 427 (Tri- Mumbai)].

3.10 The appellant filed a miscellaneous application for condonation of delay and submitted that they could not file appeal within 60 days as their authorized person was travelling continuously and as the payment pattern has changed it took them some time in getting the mandatory pre-deposit document; that they received the impugned OIO on 29.04.2019 and filed the present appeal 20 days late and hence prayed to condone delay of 20 days under Section 85 of the Finance Act, 1994 (32 of 1994).

4. Personal Hearing in the matter was attended by Shri R. Subramanya, Advocate on behalf of the Appellant. He reiterated the



submissions of appeal memo and added that the activity is only sale of water and bunkers i.e. diesel and therefore, it cannot be treated as service and therefore the appeal be allowed.

5. I have carefully gone through the facts of the case, the impugned order, both appeal memorandum and submission made by the appellant at the time of personal hearing. I find that the appellant has filed application for condonation of delay of 20 days in filing the appeal for the reason that their authorized person was travelling continuously and as the payment pattern has changed it took them some time in getting the mandatory pre-deposit document.

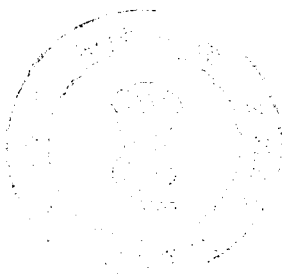
I find that the appellant has received the impugned order on 29.04.2019 and they have filed the present appeal on 16.07.2019, hence there is delay of 18 days and not 20 days as stated by the appellant, in filing the appeal.

I find that the appeal has been filed beyond the stipulated period of **sixty days** from the date of receipt of the impugned order. The appellate authority has, in terms of Section 85 of the Finance Act, 1994 has power to condone delay in filing appeal maximum up to further **thirty days**, albeit on reasonable cause being shown. The present appeal has been filed within the stipulated time limit of **ninety days** i.e 78 days (60 days + 18 days) provided under the statute. I find justice in the reason for delay and as the delay is within the limit of 30 days allowed under law. I, condone the delay of 18 days in filing of Appeals and proceed to decide the Appeals on merits.

5.1 The issue to be decided in the present appeal are:

- (i). whether activity undertaken by the appellant is sale of water and bunker or supply of water and bunker.
- (ii). whether service tax is leviable on the said activity or otherwise.

6. The appellant has argued that the demand raised under section 73(1) of the Act on the basis of suppression of facts is barred by time and not sustainable in law; that department cannot travel beyond normal period of 18 months; that the appellant received the said SCN on 15.03.2019 therefore 18 months should be calculated from March-2019.



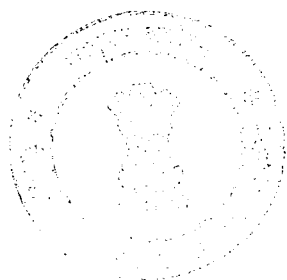
In this regard, I find that the relevant date for issue of Show Cause Notice under Section 73(1) of the Finance Act, 1944 for contravention of any of the provisions of the rules made thereunder with intent to evade payment of service tax is five years. Therefore, the demand is not hit by limitation of time.

As regards the date of receipt of the SCN, the Joint Commissioner, Central GST Audit, Rajkot in his letter dated 24.01.2020 has reported that the appellant has received the SCN on 07.08.2018, which clearly establishes that the appellant has received the SCN well within the time.

6.1 Further, the appellant has contended that they were not served any personal hearing intimation and the impugned order was passed by the adjudicating authority ex-parte, without giving them opportunity to attend the hearing.

I observe that the adjudicating authority in the impugned order has noted at Para 11 that opportunity for personal hearing was granted and fixed on 17.01.2019, 25.01.2019, 12.02.2019 and 28.03.2019 but the appellant did not appear for personal hearing on any of the given dates. Hence, I disagree with appellant's contention.

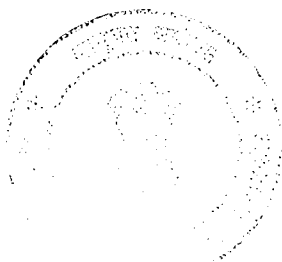
7. I find that the adjudicating authority has confirmed the demand of service tax on the consideration received for "for supply of water" to the vessels. The question that arises is whether in this kind of transaction; the dominant intention is sale or service? The appellant has vehemently contended that they have sold water and bunker to the vessels and not supplied water and bunker to the vessels. In support to their claim they have submitted some sample copy of invoices. On perusal of invoice bearing no. 50 dated 12.11.2012 issued by M/s Marine Suppliers, invoice no. 72 dated 24.02.2014 issued by M/s Marine Offshore, invoice no. 14 dated 02.05.2015 issued by M/s Marine Offshore, invoice no. 48 dated 27.11.2014 issued by M/s Marine Offshore, invoice no. 1321 dated 30.11.2012 of M/s Kotak Petro-Chem Pvt. Ltd., invoice no. TI/001 dated 03.01.2015 of M/s Gujarat Mariners, invoice no. 1429031 dated 14.03.2014 of M/s Reliance Industries Ltd., invoice no. 1424472 dated



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23.06.2016 of M/s Reliance Industries Ltd., invoice no. 003/15-16 dated 23.04.2015 of M/s Gujarat Mariners, I note that all the invoices are issued to the appellant, therefore, it is clear that appellant has purchased water and bunker and sold the same to the vessels. Further, I find that Sale of water is exempted from Sales Tax/VAT in terms of sub section 1 of section 5 of Gujarat VAT Act, 2005 listed at Sr. No. 53 of Schedule I of Gujarat VAT Act, 2005. I also examined the above invoices with respect to sale of bunker wherein I observe that the appellant has purchased bunker and paid Sales Tax/VAT at appropriate rates. Furthermore, on perusal of the Statement showing bunker supply (Tax Invoice Register) for the period in dispute, I find that the said statement indicates the cost/value of the bunker, it also shows that the appellant has collected Sales Tax/VAT on sale of bunker on the entire value. The appellant have placed evidence to show that they had incurred cost in buying bunker which was eventually supplied by them to the vessels. Thus, I find that the appellant has evidenced in support of their argument that water and bunker was indeed purchased by them and then sold. I find that the description of transaction as "Supply" of goods at the place desired by the customers for the stated consideration was for "sale" of those goods. The above invoices thus, provided evidence to show that bunkers being supplied by them to the master of the vessel by using water-borne barge was not supply but actually involved an element of sale and in lieu thereof; some definite consideration was paid or payable to them by the master. Therefore, merely because they arranged for supply of water by barge and transportation of bunker by barge to the vessel cannot be treated as supply particularly when the appellant has evidenced regarding payment and collection of VAT, etc. The sale of bunker on which sales tax is charged, cannot be treated as service for the purpose of charging service tax. Therefore, I find that supply of water and bunker were sales transactions only and not service which does not attract Service tax.

8. The appellant has further contended that they had correctly described Fresh Water, showing the quantity and price per M.T of fresh water sold to their consignees and the value of the water included transportation charges of Tankers/Barges, pumping charges and profit margin only; that the appellant had not charged any separate service charge for supply of



water on board of any vessel; that the lower adjudicating authority misinterpreted sale of water as supply of water. That they are purchasing water and supplying the same on back to back basis to the ship-owners and getting the cost of water reimbursed from the ship-owners under proviso (vi) & (vii) of Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006; that they have shown in the vouchers all such reimbursable expenses separately and recovered from the buyers of water.

On perusal of the invoices, I find that the appellant have correctly described Fresh Water, showing the quantity and price per M.T of fresh water sold to the consignees. Further, I note that the activity of supplying water and bunker and getting the cost reimbursed from the ship-owners tantamount to sale of goods and no Service tax involved as no service is rendered by the appellant. I find force in the argument of the appellant and thus, conclude that the water charges and bunker charges collected from the ship-owners is nothing but an incidental reimbursement expense.

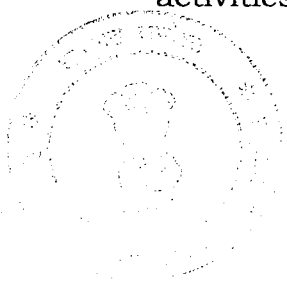
9. The appellant has vehemently argued that they are neither a port nor other port nor authorized by a Port or other port, therefore, service tax is not attracted under the category of "Port Service".

9.1 I find that 'Port Services' as defined under Section 65(82) of the Finance Act, 1994 (with effect from 1st July 2010 and as applicable upto 30th June 2012) covered "*any service rendered within a port or other port, in any manner*".

In terms of Section 65(105)(zn) of Finance Act 1994, "**Taxable service**" means *any service provided or to be provided 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.

9.2 I find that the activities of the appellant cannot be described as activities carried out by a person authorized by the "port" or on behalf of the port. The Rules framed by the port authorities to regulate trading activities has no implication for the taxability of the transactions. Hence,



the appellant's activities are not classifiable under the category of "port service" as these services are not supposed to be carried out by the port. I find that the taxability on sale of water would not arise at all in terms of Section 65(105)(zn).

9.3 Thus, I find that in the present case, the appellant was selling water and bunker to the vessels and, therefore, it is simple transaction of sale and does not include any component of service. Therefore, I am of the considered view that the case of the appellant is not confirming to the requirement of 'service', as per the definition of 'Port Services' as defined under Section 65(82) of the Finance Act, 1994.

10. In view of the foregoing discussion and analysis, it is concluded that the activities undertaken by the appellant should not fall within the scope and ambit of taxable service, for payment of service tax. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellant.

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

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

(Signature)
(Gopi Nath)
Commissioner (Appeals)

By RPAD

To

M/s. Sea Shipping Service, A-1,
Prabhukrupa Society, Opp. St.
Gregorious School, Bedeshwar,
Jamnagar-361002.

मैसर्स सी शिपिंग सेवा,
ए-१, प्रभुकृपा सोसाइटी, ऑप। सेंट ग्रेगरी
स्कूल, बेदेश्वर, जामनगर-३६१००२ ।

Copy for information and necessary action to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone Ahmedabad for his kind information.
- 2) The Commissioner, GST & Central Excise, Rajkot Commissionerate.
- 3) The Assistant Commissioner, GST & Central Excise, Division-I, Jamnagar.
- 4) Guard File.

