



::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

Tele Fax No. 0281 - 2477952/2441142 Email: 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
	V2/1/RAJ/2020	AC/JAM-I/ST/20/2019-20	31/10/2019

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

RAJ-EXCUS-000-APP-035-2020

आदेश का दिनांक / Date of Order:	12.02.2020	जारी करने की तारीख / Date of issue:	12.02.2020
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**श्री गोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित/
Passed by Shri Gopi Nath, Commissioner (Appeals), Rajkot**

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु 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 Lotus Weighbridge and Lotus muliti Services, (Proprietor Firoz Hussain Patani), Village- Dhichada, Post Office- Bedeshwar Taluka & Distt: Janmagar.

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 असारवा 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 माँग, ब्याज की माँग और लगाया गया जर्माना, 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 नियमावली, 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 जर्माना, 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/-.

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- (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 सकती है एवं इसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (जिनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण की 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 (सेस्टैट) 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, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम-2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जों 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 कोपनरीक्षण 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 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 क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए हैं। /
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय 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 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।
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 चाहिए। इस तथ्य के होते हुए भी की लिखा पढ़ी 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 filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.
(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। /
Attention is also invited to the rules 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. Lotus Weighbridge and Lotus Multi Services (Prop. Feroz Hussain Patni), Dichada, Bedeshwar, Jamnagar (*herein after referred to as "Appellant"*) filed present appeal against Order-in-Original No. AC/JAM-I/ST/20/2019-20 dated 31.10.2019 (hereinafter referred to as '**the impugned order**') passed by the Assistant Commissioner, Central GST, Division, Jamnagar-I, (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 March, 2014 to June, 2017 revealed that the appellant supplied water by tankers to the barges through tankers; that the appellant did not pay service tax on the supply of water. 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 10.04.2019 asking the appellant as to why service tax of Rs.9,77,462/- 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 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. 9,77,467/- along with recovery of interest and imposition of penalty of Rs. 80,000/- under section 77(2) and penalty of Rs. 9,77,467/- under section 78 of the Act.

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

3.1 That they were engaged in 'sale of water' to M/s United Shippers Limited (hereinafter referred to as '**the company**') through water tankers; that most of the time these supplies were made to the offices, wand barges of the company which were situated/ stationed within the port areas.

3.2 That they purchased water from Mr. Sikaner of Navlakhi and sold the same to the company under 'purchase order'; that they didn't charge any service tax on the above transactions since such transactions were not only out of the scope of 'service', as provided u/s 65B(44) of the Finance Act, 1944, but also were covered in the 'negative list', as provided u/s 66D of the said Act, that sale of water were specifically exempted from VAT under entry no. 53 of Schedule I, as provided under Section 5(1) of Gujarat VAT Act, 2003.

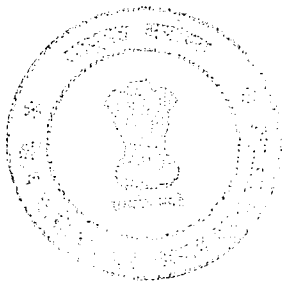
3.3 That the impugned order is based on old provisions of erstwhile Section 65(82) and Section 65(105) of the Finance Act, 1994 and Circulars/ letters dated 09.07.2001 and 10.11.2003 and therefore untenable in law as the present demand pertains to the period March-2014 to June-2017 and the above provisions are not applicable w.e.f 01.07.2012.

3.4 That the definition of service as per Section 65B(44) of the Finance Act, 1944 covers all activities carried out by a person for another for a consideration but does not include an activity which constitute a transfer of title in goods by way of sale.

3.5 That the negative list of services, as provided in Section 66D of the Act, specifically entry no. (e) does not cover 'trading of goods'. In support of their above submissions, they relied upon OIO No. BHR-EXCUS-COM-033-034/2016-17 dated 14.07.2016.

3.6 That the impugned order is unsustainable in law being partly barred by limitation; that the necessary ingredients to invoke proviso to Section 73(1) of the Act like fraud, suppression etc. with intent to evade payment of service tax is absent, therefore, recovery of service tax, interest and imposing penalties under various provisions of law is untenable.

4. Personal Hearing in the matter was attended by Shri Dinesh Kumar Jain, Chartered Accountant on behalf of the Appellant. He reiterated the submissions of appeal memo and requested that appeal may be allowed.



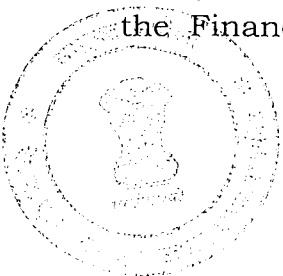
5. I have carefully gone through the facts of the case, the impugned order, appeal memorandum and oral submission made by the appellant at the time of personal hearing.

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

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

6. I find that the adjudicating authority has confirmed the demand of service tax on the consideration received for “for supply of water” to the barge. 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 to the barge and not supplied water to the barge. In support to their claim they have submitted some sample copy of invoices. On perusal of invoice bearing no.23 dated 31.03.2014, bill no. 16 dated 01.05.2014, bill no. 046 dated 01.08.2015, bill no. 0121 dated 01.01.2010, bill no. 028 dated 01.06.2017, I note that all the bills are issued by Sikander Sumar Sota, Navlakhi, therefore, it is clear that appellant has purchased water and sold the same to the barges. Further, on going through bill no. LMS/006/2014-15 dated 31.03.2014, bill no. LMS/016/2014-15 dated 05.05.2015, bill no. LMS/046/2015-16 dated 05.08.2015, bill no. LMS/121/2016-17 dated 10.01.2017, bill no. LMS/028/2017-18 dated 06.06.2017, I find that all the bills are issued to United Shippers Limited, Jamnagar by the appellant. The content in the bills raised is “Being Water tanker Pipaliya to Navlakhi port use for USL Barge office and welding point”, thus it is clear that the appellant has purchased water from Sikander Sumar Sota, Navlakhi and sold to M/s United Shippers Limited, Jamnagar.

6.1 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, 2003 listed at Sr. No. 53 of Schedule I of Gujarat VAT Act, 2003. I also observe that the appellant has not charged any service tax on the above transactions since such transactions were out of scope of ‘service’ as provided u/s 65B(44) of the Finance Act, 1994. On examining the **contract of ‘Purchase of**



water' entered by the appellant and the company on 01.06.2013, I find that the contract has been agreed upon by the parties for the period from 01.06.2013 to 31.05.2018. The rate of supply of water has been agreed upon at Rs. 2050/- per tanker of 20MT for Bland water (moru pani) and Rs. 2800/- per big tanker and Rs. 1400/- per small tanker from Pipaliya to Navlakhi for Sweet water (Mitu pani). Thus, I find that the appellant has submitted enough evidence in support of their argument that water was indeed purchased by them and then sold to the company. 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 water was being supplied by them to the barges by using water tankers 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 company. Merely because they arranged for supply of water by tanker to the barge cannot be treated as supply. Therefore, I find that supply of water was sales transaction only and not service and such transactions does not attract Service tax.

7. I find that merely purchasing water from Sikander, Navlakhi and selling to the company at the rates as agreed from time to time cannot be treated as service but is a simple transaction of sale and purchase of water. 'Service' has been defined under Section 65B(44) of the Finance Act, 1994 as:

(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

(a) an activity which constitutes merely, —

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or

(iii) a transaction in money or actionable claim;

(b)

(c)

[Emphasis supplied]

On plain reading of the above definition, it is clear that a transaction of sale is excluded from the definition of service.

Further, the definition of "Sale" as defined in Section 2(23) of the Gujarat Value Added Tax Act, 2003 is as under:

(23) "sale" means a sale of goods made within the State for cash or deferred payment or other valuable consideration and includes,-

.....

but does not include a mortgage, hypothecation, charge or pledge; and the words "sell", "buy" and "purchase" with all their grammatical variations and cognate expressions shall be construed accordingly.

Explanation.-

(i)

(ii)

(iii) every transfer of property in goods by the Central Government, any State Government, a statutory body or a local authority for cash, deferred payment or other valuable consideration, whether or not in the course of business, shall be deemed to be a sale for the purposes of this Act;

[Emphasis supplied]

From the above, it is crystal clear that any transfer of property in goods for cash is to be considered as 'sale'.

8. Further, I find that the appellant has correctly described the rate of Fresh Water as per the contract. The appellant have placed evidence to show that they had incurred cost in buying water which was eventually supplied by them to the barges and is nothing but an incidental reimbursement expense. Therefore, I note that the activity of supplying water and getting the cost reimbursed from the company 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 collected from the company is a consideration received for sale of water.

9. The appellant has vehemently argued that the impugned order has referred to the old provisions of the Act /Circulars which are not applicable in the present case, as the period covered in the instant case is March-2014 to June-2017.

I observe that the adjudicating authority has quoted the said provisions and Circulars for the purpose of reference to describe the activities undertaken by the appellant as 'service' 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". I find that the taxability on sale of water would not arise at all in terms of Section 65(105)(zn).

10. Thus, I find that in the present case, the appellant was selling water to the barge 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 activity of the appellant is not confirming to the requirement of

'service', as per the definition contained in Section 65B(44) of the Act.

11. I have gone through the Order in Original cited and relied upon by the appellant and I find that issue involved in the said OIO is similar to the present case. Therefore, ratio laid down in the cited OIO is applicable to this case.

12. 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.

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

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

सत्यापित



अ. अ. अन्वर
अधीक्षक (अपील)

By RPAD

To

Nath
(Gopi Nath)
Commissioner (Appeals)

<p>M/s. Lotus Weighbridge and Lotus Multi Services (Prop. Feroz Hussain Patni), Dichada, Bedeshwar, Jamnagar</p>	<p>मैसर्स लोटस वेयब्रिज एवं लोटस मल्टी सर्विसेस (प्रो. फीरोज़ हुसैन पतनि), दिछड़ा, बेदेश्वर, जामनगर</p>
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Copy 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 Deputy Commissioner, GST & Central Excise, Division, Jamnagar -I.
- 4) Guard File.

