



::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

रजिस्टर्ड डाक ए.डी.द्वारा :-

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|---|--|-----------------------------|-----------------|
| क | अपील / फाइल संख्या/ Appeal / File No. | मूल आदेश सं / O.I.O. No. | दिनांक/ Date |
| | V2/41/GDM/2019 | 19/DC/Mundra/2018-19 | 31-12-2018 |

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

KCH-EXCUS-000-APP-016-2020

| | | | |
|------------------------------------|------------|--|------------|
| आदेश का दिनांक / Date of Order: | 07.02.2020 | जारी करने की तारीख / Date of issue: | 07.02.2020 |
|------------------------------------|------------|--|------------|

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 :-**

Seabird Marine Services Pvt Ltd, 1 floor, Bharat CFS, Zone-1, Adani port road, MPSEZ, Mundra-370421, Kutch

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- 370016 को की जानी चाहिए। /

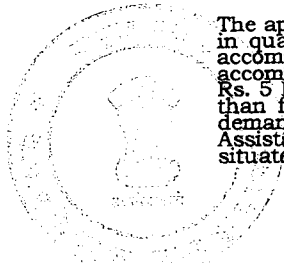
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(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 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 मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

The appeal under sub section (1) of Section 86 of the Finance Act, 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.



- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। /
The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, 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 हैं
(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 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 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 इयूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए हैं। /
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील)नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट हैं, 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 चाहिये। 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 Appellate 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 दिधि) 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 ::

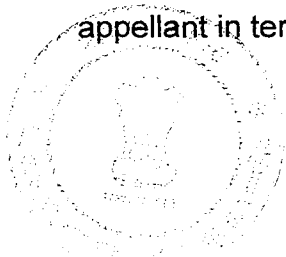
M/s. Seabird Marine Services Pvt. Ltd., 1st Floor, Bharat CFS, Zone-1, MPSEZ, Mundra (hereinafter referred to as 'the appellant') has filed present appeal against Order-in-Original No. 19/DC/Mundra/2018-19 dated 31.12.2018 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, Central GST, Division – Mundra, Gandhidham (hereinafter referred to as "the adjudicating authority").

2. The brief facts of the case are that the investigation carried out against the appellant revealed that they were paying service tax on lift on/lift off charges of the empty and loaded containers and transportation of loaded containers from CFS to port jetty and vice versa, however, no service tax was paid by them on transportation of empty containers from Jetty to CFS and vice versa by claiming benefit of exemption under Notification No. 25/2012-ST dated 20.6.2012. Show Cause Notice No. DGCEI/RRU/36-22/2016-17 dated 31.03.2017 was issued to the appellant proposing recovery of Service Tax of Rs. 40,38,052/- for the period from 01.07.2012 to 31.03.2015 under proviso to Section 73(1) of the Finance Act, 1994 (hereinafter referred to as "the Act") along with interest under Section 75 of the Act, imposition of penalty under Section 78 of the Act. The said Show Cause Notice was adjudicated by the adjudicating authority, vide the impugned order, in which Service Tax of Rs. 40,38,052/- was confirmed under Section 73(1) of the Act along with interest under Section 75 of the Act and penalty of Rs. 40,38,052/- was imposed under Section 78 of the Act.

3. Aggrieved, appellant preferred the present appeal, *inter-alia*, on the following grounds: -

(i) that the appellant provided transportation of goods by road and issued consignment notes, hence, they covered under 'Goods Transport Agency' which defined as per Section 65B(26) of the Act; that the appellant has provided the service of transportation of empty containers from Terminal to Port and thus, the appellant provided road transportation service and issued consignment note and hence, they fall within definition of GTA; that in case of GTA service, Rule 2(1)(d)(i)(B) of the Service Tax Rules, 1994 (hereinafter referred to as 'the Rules') stipulates that recipient (i.e. shipping line) liable to pay service tax; thus, the appellant not liable to pay service tax for transportation of empty containers from port to CFS.

(ii) that the appellant collected transportation charges for transport of empty containers from port to CFS where transportation charges per trip is less than Rs. 1,500/-; that Service Tax would not be levied on transportation charges collected by the appellant in terms of Notification No. 25/2012 - ST dated 20.06.2012.

(iii) that even if the service of movement of empty containers are not considered as GTA services, same remains not taxable in view of clause (p) of Section 66D of the Act.

(iv) that different services provided by appellant cannot be treated as 'composite supply' and transportation charges separately charged will be considered as 'transportation charges' only and not to be combined under 'cargo handling service' by treating the entire service as 'bundled service'; that when cargo handling charges and transportation charges were recovered separately, then Service Tax cannot be charged on the transportation charges collected by the appellant; that the same clarified by the department vide Circular No. B11/1/2002-TRU dated 01.08.2002 at para 4 and para 11; that the appellant relied on case law of Balmer Lawrie & Co. Ltd. v. CCE (2014) 35 STR 611 (Tri-Mumbai).

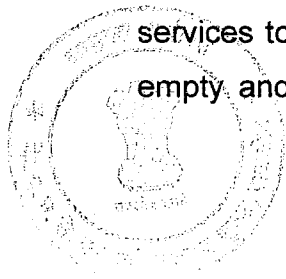
(v) that in the present case, the primary purpose of the contract is for transportation of empty containers from port to CFS and handling and storage services are ancillary to the primary services of transportation; that the appellant has charged in its invoice all charges separately and hence entire transaction would fall under the service category of GTA service; that as per Circular No. 354/98/2015-TRU dated 05.10.2015, if the primary contract is for transportation of goods then the services ancillary to the transportation like storage, loading/unloading etc., would fall under the service category of GTA service if the said charges are included in the invoice by the GTA himself and not by any other person; that as a result, under GTA service, shipping line being the receiver of service would be liable to pay Service Tax.

(vi) that the appellant is not liable to pay service tax, interest under Section 75 of the Act and penalty under Section 78 of the Act.

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

5. I have carefully gone through the facts of the case, the impugned order, grounds of appeal and written as well oral submissions made by the appellant. The issue to be decided in the present appeal is as to whether confirmation of demand of service tax on movement of empty containers from Jetty to CFS and vice versa provided by the appellant is correct or not.

6. I find that the appellant being a Container Freight Station was providing various services to the shipping lines such as Lift on/Lift off of the containers, transportation of empty and loaded containers from the Jetty/Terminal to the CFS, unloading at CFS,



storage of containers, cargo handling, loading of the goods meant for export into containers and exporting of loaded containers, which have not been disputed. It is also not disputed that the appellant has issued invoices to the shipping lines, bifurcating in two parts – transportation charges and handling charges, but they have not discharged service tax on transportation charges of movement of empty containers from port to CFS by claiming exemption under Notification No. 25/2012-ST dated 20.06.2012, on the ground that it is a GTA service and below the exemption limit. However, for handling charges, they have paid service tax.

7. I find that the concept of the GTA, after 1.7.2012, is covered under Section 65B(26) of the Act which read as under:

"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;

7.1 In view of the above, I find that to get the benefit of the exemption in term of Notification No. 25/2012-ST dated 20.06.2012, the services have to be provided by a goods transport agency by way of transportation of the goods. Further, there should be a consignment note for transportation of goods which is being transported in a single goods carriage.

7.2 Further, I find that Rule 4A and Rule 4B of the Rules are relevant for goods transport agency, which are as under:

"RULE 4A. Taxable service to be provided or credit to be distributed on invoice, bill or challan. —

(1) Every person providing taxable service shall not later than thirty days from the date of completion of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier, issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorized by him in respect of such taxable service provided or agreed to be provided and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the following, namely :-

- (i) the name, address and the registration number of such person;*
- (ii) the name and address of the person receiving taxable service;*
- [(iii) description and value of taxable service provided or agreed to be provided; and*
- (iv) the service tax payable thereon:*

.....

Provided further that in case the provider of taxable service is a goods transport agency, providing service to any person, in relation to transport of goods by road in a goods carriage, an invoice, a bill or, as the case may be, a challan shall include any document, by whatever name called, which shall contain the details of the consignment note number and date, gross weight of the consignment and also contain other information as required under this sub-rule:"

"RULE 4B. Issue of consignment note. — 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:

The definition of the Consignment note as given under explanation appended to Rule 4B of the Rules means—

"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 name 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."

7.3 It can be seen from above that the provision of Rule 4A and also Rule 4B of the Rules stipulate that every "Goods Transport Agency" shall issue consignment note. This provision read with Section 65B(26) of the Act leads to a situation where the definition is dependent of a requirement laid down using the defined term itself. Since the provision of Act has to prevail, the definition at Section 65B(26) of the Act has to be understood independent of Rule 4B of the Rules to decide whether the person concerned is a goods transport agency by looking at the meaning of consignment note and then apply Rule 4B of the Rules, if the person concerned is found to be a goods transport agency.

7.4 I find that the adjudicating authority held that Shri Mitesh Dharamshi, General Manager and Authorized Signatory of the appellant in his statement dated 16.02.2015 and 07.07.2015 has admitted that they have not issued any consignment note physically at the time of movement of the containers and have also admitted that invoices issued were not contained any reference of the consignment note. Relevant portion of the statement dated 07.07.2015 of Shri Mitesh Dharamshi, General Manager and Authorized Signatory is as under:

Q. 01: In your Statement dated 16.02.15, in reply to Question 06, you have admitted that no Consignment Note are being issued. However, in reply to our letter dated 12.05.2015 you have intimated that your company prepares consignment note for movement of empty container. Please explain.

Ans. 01 : We do agree that we are not issuing physical copy of consignment note to the consignor or transporter, if any, but are preparing the consignment note in the system which is directly sent by the computer System in soft copy to the consignor.

Q. 02 : In your letter dated 30.05.2015, You have submitted sample copy of the Consignment note which are unsigned. How? When such consignment note is generated?

Ans. 02 : The consignment note is generated in System on the date of receipt of order for transport of any container. The same remains in the System and no physical copy of this consignment note is taken or signed. The sample copy submitted to your office were printed from the System at the time of submission of reply to your letter dated 12.05.2015.

Q. 03 : How the serial number is given in System to each Consignment note ? Whether any reference, Serial number of Consignment note is given in Invoice raised corresponding to the Consignment note?

Ans. 03 : The serial number to each consignment note is given by the System. The prefix is year, month, date of the transaction followed by continuous serial number. However, no any reference of such serial number is given in the Invoice corresponding to such Consignment note. The relation and matching of the both, Invoice and Consignment note can be done by container number only.

7.5 It can be seen from the above that the said consignment note was auto generated in the computer system which was unsigned and directly sent by the computer system to the consignor in soft format; that they also admitted that the invoice issued by them not contained any reference of such consignment note. I find that such consignment notes issued by the appellant do not fulfill the criteria of consignment note as per Rule

per the contract between them.

7.7 In view of the above terms and conditions of the contract, I find that the contract between the appellant and the shipping lines is for storage of empty containers, its safety and security, its movement, insurance, stuffing & de-stuffing, etc. and not for mere transportation of containers. I find that shipping lines are more concerned about the handling and storage of empty containers and they have not chosen any transport operator for these services as it appears that their main area of concern is immediate lifting off the containers from the terminal area to avoid the storage, ground rent and detention charges and safe and secure storage of the empty containers, so that whenever they receive any order for stuffing goods in their containers from their customers, they can direct the CFS operator to make arrangement of delivery of empty containers to them.

7.8 I find that in the annexure to agreement/contract, charges are shown for transportation, lift on/ lift off etc. but storage of containers is free for first 50 days and thereafter, storage is charged. However, it is clear that no one would block/provide their available space and store containers for free and hence, the charges decided by these two parties i.e. the appellant and shipping lines per container are for host of other services like storage of empty containers, loading, unloading, movement and its handling. I, therefore, find that the primary and main function in this agreement is not mere transportation as argued by the appellant but it is a combination of services which include loading empty containers in vehicle, transporting from jetty to CFS, finally loading off and storage at the CFS, security of containers, delivery of containers as per direction of shipping company etc. I find that these services are combo service which cannot be artificially bifurcated to get undue advantage of Notification No. 25/2012-ST dated 20.06.2012. I, hence, find that as the basic work of the appellant is of CFS and dealing in import and export cargo, the impugned services provided by them cannot be considered as that of GTA Service. I, therefore, find that the argument of the appellant that when cargo handling charges and transportation charges were recovered separately, then Service Tax cannot be charged on the transportation charges is not tenable and hence, reliance placed by them on Circulars and case law is not helpful to them. The adjudicating authority has, thus, correctly held that the services provided by the appellant were not mere transportation of containers but storage and warehousing services as well as cargo handling services along with many other services which are in the nature of bundled services.

7.9 Further, I find that Shri Mitesh Dharamshi, General Manager and Authorized Signatory of the appellant in his statement dated 16.02.2015 has admitted that "*for movement of empty containers from other CFS to our CFS and vice-versa, in case of*

non-availability of empty containers then, the lift on/lift off charges of empty containers along with its transportation charges, a composite invoice is being issued on exporters/CHA as "Empty containers for export stuffing". The service tax on total composite amount is charged under 'cargo handling service'. I find that the service of movement of empty containers is same in case they are transferred from Port to CFS or they are transferred from one CFS to other CFS, however they were paying service tax on movement from CFS to CFS whereas they were not paying any service tax on movement of empty containers from Port to CFS. I find that the appellant has made a planned evasion of service tax by separately showing the transportation charges and lift on/off charges in the invoice instead of showing composite income under the handling of empty containers in the invoice issued and thereby evaded the service tax on consideration received from the customers.

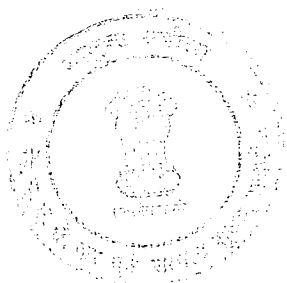
7.10 Further, I find that the appellant has changed their business model with effect from 01.04.2015 and they provided one basket of service including transportation, handling and storage of containers and started charging Service Tax on the full value of contract under Storage and warehousing services, as narrated in the SCN. I find that this fact also implies that the said service was taxable right from the inclusion of negative list concept i.e. with effect from 01.07.2012.

8. I find that the appellant contended that even if the service of movement of empty containers are not considered as GTA services, the same remains non taxable in view of clause (p) of Section 66D of the Act. I find that it is primarily meant for transport of goods either by the owner of the goods themselves or transport of any other goods which are not commercially transported. I find that the empty containers are not goods but only a medium to store goods. I find that the appellant not provided mere transportation of containers as discussed above, moreover, the empty containers were not handed over to the consignee but are used for stuffing of export cargo in the CFS itself. Therefore, the exemption provided in clause (p) of Section 66D of the Act is not applicable.

9. In view of above, I uphold the impugned order and reject the appeal filed by the appellant.

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

9.1 The appeal filed by the appellant is disposed off in above terms.



(Signature)

(Signature)
 (GOPI NATH)
 Commissioner (Appeals)
 Page No. 9 of 10

By RPAD

To

M/s. Seabird Marine Services Pvt. Ltd.,
1st Floor, Bharat CFS, Zone-1, MPSEZ,
Mundra

मैलर्स सीबर्ड मरीन सर्विसेस प्रा. ली.,
प्रथम मंजरील, भारत सीएफएस, झोन-
१, एमपीएसईजेड, मुँदरा.

प्रति:

- (1) प्रधान मुख्य आयुक्त, केन्द्रीय वस्तु व सेवा कर एवं केन्द्रीय उत्पाद शुल्क, अहमदाबाद क्षेत्र, अहमदाबादको जानकारी हेतु।
- (2) आयुक्त, केन्द्रीय वस्तु व सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गांधीधाम को आवश्यक कार्यवाही हेतु।
- (3) उपायुक्त, केन्द्रीय वस्तु व सेवा कर अण्डल- मुँदरा, गांधीधाम को आवश्यक कार्यवाही हेतु।
- (4) गार्ड फ़ाइल

