::आयुक्त (अपील्स) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), CENTRAL GST & 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 :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/206/RAJ/2017	16/D/ST/2016-17	16-03-2017

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

RAJ-EXCUS-000-APP-012-2018-19

आदेश का दिनांक / Date of Order:	04.04.2018	जारी करने की तारीख / Date of issue:	11.04.2018

Passed by **Shri Gopi Nath, Additional Director General (Audit), Ahmedabad Zonal Unit, Ahmedabad.**

अधिसूचना संख्या २६/२०१७-के.उ.शु. (एन.टी.) दिनांक १७.१०.२०१७ के साथ पढ़े बोर्ड ऑफिस आदेश सं. ०५/२०१७-एस.टी. दिनांक १६.११.२०१७ के अनुसरण में, श्री गोपी नाथ, अपर महानिदेशक ऑडिट, अहमदाबाद जोनल यूनिट को वित्त अधिनियम १९९४ की धारा८५, केंद्रीय उत्पाद शुल्क अधिनियम १९४४ की धारा ३५ के अंतर्गत दर्ज की गई अपीलों के सन्दर्भ में आदेश पारित करने के उद्देश्य से अपील प्राधिकारी के रूप में नियुक्त किया गया है.

In pursuance to Board's Notification No. 26/2017-C.Ex.(NT) dated 17.10.217 read with Board's Order No. 05/2017-ST dated 16.11.2017, Shri Gopi Nath, Additional Director General of Audit, Ahmedabad Zonal Unit, Ahmedabad has been appointed as Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 85 of the Finance Act, 1994.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ 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 / Service Tax, Rajkot / Jamnagar / Gandhidham :

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

1.M/s Lorenzo Vitrified Tiles P. Ltd., National Higway, Opp : Omkar Petrolium Morbi 363 642,

इस आदेश(अपील) से व्यथित कोइ 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 अपीलें सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असार्वा 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) 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 जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षैत्र 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 आधिनियम, 1994 की धारा 86(1) के अतगत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की माँग ,ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

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

(i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी । /

The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" मे निम्न शामिल है

(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगे।/

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 पुनरीक्षण याचिका निम्नलिखित मामलों में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक 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 क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न॰ 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए है।/
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए । उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /
The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए ।
जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 1000 -/ का भुगतान किया जाए ।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस आदेश में कई मूल आदेशो का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है । / In case, if the order covers 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-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की और 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

(i) The Adjudicating Authority has erred in holding that the appellant is a service provider in as much as in para-15.9 of the impugned order, it is accepted that the appellant was arranging the services of transportation for the customers, and hence, it proved that they are not service provider and thus, impugned order liable to be set aside.

(ii) The Adjudicating Authority has erred in confirming the demand by ignoring the fact that the appellant has discharged the service tax liability on outward transportation by road under reverse charge mechanism and the shipping line had discharged the service tax liability on sea freight and thus, confirming demand simply on the ground that they collected the transportation charges from the customers, is bad in law.

(iii) The Adjudicating Authority has erred in confirming the demand by ignoring the fact that the abatement availed under the Notification No. 26/2012-ST dated 20.06.2012 is clearly allowable, in as much as, they discharged the service tax liability under reverse charge mechanism for which no cenvat credit has been availed by the transporter apart from the facts that no any evidence has been produced to prove that the applicant or the transporter has availed cenvat credit of input in providing such service.

(iv) The Adjudicating Authority has erred in confirming the demand without producing any evidence to prove that the appellant had any means to provide so called such services and had provided such services by use of such means apart from the facts that allegations made without producing any evidences and without clarifying the issues, as requested for in their submission before the Adjudicating Authority.

(v) Extended period of limitation is wrongly invoked as the issue involved in the present case was in knowledge of the department.

(vi) As no service tax is leviable, demanding interest and imposing various penalties under the impugned order is wrong.

4. Hearing was held on 22.02.2018, wherein Shri Paresh Sheth, Advocate appeared on behalf of the appellant and reiterated the submissions of the appeal memorandum for consideration.

5. I have gone through the appeal memorandum and oral submission made during personal hearing. I proceed to decide the case on merits since the appellant has made payment of mandatory deposit of Rs.2,13,485/- (7.5% of Rs.28,46,459/- vide SBI Challan CIN No.00053471304201700497 dated 13.04.2017 and thus, complied with the requirement of fulfillment of mandatory pre deposit in pursuance to the amended provisions of Section 35F of the Central Excise Act,1944 made applicable to Service Tax matter in terms of the Section 83 of the Finance Act,1994 effective from 06.08.2014.

6. The issue in the present case is to decide whether the Adjudicating Authority under the impugned order confirmed the demand by holding the appellant as liable to pay service tax on the bundled service of Transportation of Goods by Road as well as Transportation of Goods by Sea i.e. "Transportation of Goods by Vessel' is correct or otherwise. I find that there is no dispute that the appellant had discharged service tax on Transportation of Goods by Road under reverse charge mechanism. I also find that the appellant has collected the transportation charges from the buyers for transporting the goods from the factory through road and by sea upto customer places at Cochin and other coastal port. However, the appellant has strongly

contended on the issues as interalia mentioned at para-3 above especially on the issue of double taxation as well as being not Service providers so far transportation by sea is concerned. Now I take up the appeal for final decision.

7. The appellant contended that the Adjudicating Authority has erred in holding that the appellant is a service provider in as much as in para-15.9 of the impugned order, it is accepted that the appellant was arranging the services of transportation for the customers, and hence, it proved that they are not service provider and consequently, impugned order liable to be set aside. I find that at para 15.9 of the impugned order it is observed by the Adjudicating Authority that " They are manufacturer of the goods and clear the goods at factory gate and provide transportation services to their customers by arranging transportation of the goods by road (from factory to sea port) and then by vessel from nearby port to destination sea port in this country". From these facts, it transpires that the sale is effected at the factory gate only and the transportation by road as well as by sea was arranged by the appellant on behalf of their customers. For that, transportation charges were recovered from the customers by the appellant which were paid to the road transporters as well as to the vessel shipping line by the appellant. Thus, so far transportation is concerned whether by sea or road, the role of the appellant is limited for arranging the same on behalf of their customers and thus, I find that the appellant has acted as an agent only and they can not be considered as service providers of transportation of said goods. However, due to special provisions of Reverse Charge Mechanism, the appellant was held person liable to pay service tax on the transportation of goods by road in terms of the provisions of Rule 2(1)|(d) (B) of the Service Tax Rules, 1994 since the freight thereto has been paid by the appellant, the relevant portion thereto is reproduced as under for ease of reference.

"[(d) "person liable for paying service tax", -

(i)...

(B) in relation to service provided or agreed to be provided by a goods transport agency in respect **of transportation of goods by road,** where the person liable to pay freight is,—

The underlined bold phrases of words do indicate that the RCM is applicable in respect of only transportation of goods by road. It does not cover the transportation of goods by vessel. Thus, for the said transportation by vessel, it is the shipping line or the vessel owner as the case may be is considered as service provider and accordingly liable to pay the service tax on transportation of goods by vessel, being the service provider in the present case.

7.1 However, I find that the Adjudicating Authority has confirmed the demand considering the distance as well as transportation charges collected for the Transportation of Goods by Road and Vessel, by holding the same as bundle service as "Transportation of Goods by Vessel" in terms of provisions of Section 66F(3)(a) of the Finance Act,1994. For better appreciation of the issue, the relevant provision of the Section 66F ibid is reproduced as under.

SECTION [66F. Principles of interpretation of specified descriptions of services or bundled services. —

(1) Unless otherwise specified, reference to a service (herein referred to as main service) shall not include reference to a service which is used for providing main service.

['Illustration

The services by the Reserve Bank of India, being the main service within the meaning of clause (b) of section 66D, does not include any agency service provided or agreed to be provided by any bank to the Reserve Bank of India. Such agency service, being input service, used by the Reserve Bank of India for providing the main service, for which the consideration by way of fee or commission or any other amount is received by the agent bank, does not get excluded from the levy of service tax by virtue of inclusion of the main service in clause (b) of the negative list in section 66D and hence, such service is leviable to service tax.].

(2) Where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description.

(3) Subject to the provisions of sub-section (2), the taxability of a bundled service shall be determined in the following manner, namely :—

(a) if various elements of such service are naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which gives such bundle its essential character;

(b) if various elements of such service are not naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which results in highest liability of service tax.

Explanation. — For the purposes of sub-section (3), the expression "bundled service" means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services.]

From the plain reading of the above provisions, it clearly transpires that if any service provider providing two services then the same can be bundled together in terms of the above provisions. Now, issue to be decided in this case is whether or not, the appellant was engaged in providing/ had actually provided the said two services of Transportation of Goods by Road as well as Transportation of Goods by Vessel/Sea so as to consider the same as bundled services as "Transportation of Goods by Vessel' in terms of the above provisions of Rule-66F ibid. I find from the discussion herein at para-7 above that the appellant in no case can be considered as service provider so far the activity of transportation of goods by vessel/sea is concerned. Even for the activity of transportation of goods by road, the appellant has been made person liable to pay the service tax under reverse charges mechanism under special provisions of the Finance Act,1994 read with the provisions of Notification No. 30/2012 –ST dated 20.06.2012. Thus, when the appellant is not a service provider for the activity of transportation of goods by vessel/sea, terming/holding the same as bundled service by the Adjudicating Authority under the provisions of 66F(3)(a) of the Finance Act,1994, is not sustainable in eyes of law.

7.2 My above views are supported by the CBEC Circular No. 186/5/2015-ST dated 05.10.2015, the relevant portion thereto is reproduced as under for ease of reference.

"2. The issue has been examined. Since July 1, 2012, service tax has shifted to a negative list regime, by which all the services except those covered in negative list as mentioned in section 66D of the Finance Act, 1994 or those exempted by notification are chargeable to service tax.

3. Goods Transport Agency (GTA) has been defined to mean any person who provides service to a person in relation to transport of goods by road and issues consignment note, by whatever name called. The service provided is a composite service which may include various ancillary services such as loading/ unloading, packing/unpacking, transshipment, temporary storage etc., which are provided in the course of transportation of goods by road. These ancillary services may be provided by GTA himself or may be sub-contracted by the GTA. In either case, for the service provided, GTA issues a consignment note and the invoice issued by the GTA for providing the said service includes the value of ancillary services provided in the course of transportation of goods by road. These services are not provided as independent activities but are the means for successful provision of the principal service, namely, the transportation of goods by road.

4. A single composite service need not be broken into its components and considered as constituting separate services, if it is provided as such in the ordinary course of business. Thus, a composite service, even if it consists of more than one service, should be treated as a single service based on the main or principal service. While taking a view, both the form and substance of the transaction are to be taken into account. The guiding principle is

to identify the essential features of the transaction. The interpretation of specified descriptions of services in such cases shall be based on the principle of interpretation enumerated in section 66F of the Finance Act, 1994. Thus, if ancillary services are provided in the course of transportation of goods by road and the charges for such services are included in the invoice issued by the GTA, and not by any other person, such services would form part of GTA service and, therefore, the abatement of 70%, presently applicable to GTA service, would be available on it.

5. It is also clarified that transportation of goods by road by a GTA, in cases where GTA undertakes to reach/deliver the goods at destination within a stipulated time, should be considered as 'services of goods transport agency in relation to transportation of goods' for the purpose of Notification No. 26/2012-S.T., dated 20-6-2012, serial number 7, so long as (a) the entire transportation of goods is by road; and (b) the GTA issues a consignment note, by whatever name called".

From plain reading of the above, it is clear that a single composite service need not be broken into its components and considered as constituting separate services, if it is provided as such in the ordinary course of business. Thus, a composite service, even if it consists of more than one service, should be treated as a single service based on the main or principal service. While taking a view, both the form and substance of the transaction are to be taken into account. The guiding principle is to identify the essential features of the transaction. The interpretation of specified descriptions of services in such cases shall be based on the principle of interpretation enumerated in section 66F of the Finance Act, 1994. Thus, if ancillary services such as loading/ unloading, packing/unpacking, transhipment, temporary storage etc., are provided in the course of transportation of goods by road and the charges for such services are included in the invoice issued by the GTA, and not by any other person, such services would form part of GTA service. Further, from the Notification No. 26/2012-ST dated 20.06.2012 it is clear that both services are shown separately at sr. no.7 (Services of goods transport agency in relation to transportation of goods) and sr.no.10 (Transport of goods in a vessel) of the said notification which proves after considering the facts of the present case, that both are separate and distinct services and not ancillary services to each other. Thus, in the present case, when the activity of Transportation of Goods by Road as well as Transportation of Goods by Sea are not provided by the appellant but the same is arranged on behalf of the customers in the cases of sales of goods at factory gate, it can not be considered as composite services or bundle service at all and especially when the appellant is not a service provider for the activity of transportation of goods by vessel/sea, the terming and holding the same as bundled service by the Adjudicating Authority under the provisions of 66F(3)(a) of the Finance Act,1994, is bad in law.

7.3 Further, I find that the Adjudicating Authority has observed at para-15.2 of the impugned order that " I find that during the course of Audit, it was observed by the Auditors that the M/s Lorenzo was .....and were providing transportation services to their customers by providing transportation of the goods by Road from the factory to sea port) and then by vessel from nearby sea port to other states in India" and then at para-15.3 and 15.4 of the impugned order held that the appellant was providing bundled services to their clients. However, I find that no evidences are discussed which prove that the appellant was also providing the services of the transportation of goods by sea. This is what actually contended by the appellant apart from their submission that the said services of the transportation of goods by sea was actually provided and service tax thereon was paid by the respective shipping line, which I find has neither been addressed to nor rebutted by the Adjudicating Authority in the impugned order.

7.4 In view of the facts and discussion in foregoing paras, I hold that confirmation of demand holding the appellant as liable to pay service tax on the bundled service of Transportation of

Goods by Road as well as Transportation of Goods by Sea i.e. "Transportation of Goods by Vessel' is not sustainable.

8. On the issue of abatement in terms of the Notification No. 26/2012-ST dated 20.06.2012 (the 'said Notification' for sort), I find that the Adjudicating Authority at para-15.7 has observed that the appellant has taken abatement in value of service for calculation of service tax and also availing cenvat credit on the same and thus, contravened the conditions of the said notification and thus, at para-15.9 held that they are not eligible for abatement in value of services as provided under said notification for the calculation of service tax.

8.1 For better appreciation of the issue, I refer to the said notification, the relevant portion thereto is reproduced as under.

TABLE

Sl.No.	Description of taxable service	Percent-age	Conditions
(1)	(2)	(3)	(4)
7	Services of goods transport agency in relation to transportation of goods.	25	CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.
10	Transport of goods in a vessel	50	Same as above.

First of all, from above I find that services of transportation of goods by the GTA and Transport of goods in vessel are two distinct services for which 25% and 50% abatement has been given respectively subject to the fulfillment of the condition that CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004". From plain reading of the said provisions, it is crystal clear that if cenvat credit on inputs, capital goods and input services, **used for providing the taxable service** i.e. transportation of goods by Road(GTA) and by sea as the case be, is taken then and then only abatement as prescribed will not be available. I find that that the appellant contended that they discharged the service tax liability under reverse charge mechanism of transportation of goods by road for which no cenvat credit has been availed by the transporter apart from the facts that no any evidence has been produced to prove that the applicant or the transporter has availed cenvat credit of input in providing such service. I find that this submission of the appellant has neither been addressed to nor rebutted by the Adjudicating Authority in the impugned order and no evidences on this has been made available to the appellant inspite of being specifically asked for. I also do not find any evidences on records that the appellant had taken cenvat credit on inputs, capital goods and input services, used for providing the taxable service i.e. transportation of goods by Road(GTA).

8.2 Apart from the facts and discussion herein above, I find that Ministry's Letter F.No. B1/6/2005-TRU, dated 27-7-2005 is relevant in this case which categorically provides that a declaration by the goods transport agency in the consignment note issued, to the effect that neither credit on inputs or capital goods used for provision of service has been taken nor the benefit of Notification No. 12/2003-Service Tax has been taken by them may suffice for the

purpose of availment of abatement by the person liable to pay service tax. From this it transpires that non availment of credit on inputs or capital goods used for provision of service, is applicable to the transporters and not to the manufacturers who is paying the service tax on transportation of goods by road being a person liable to pay the service tax thereon under reverse charge mechanism.

8.3 In view of above facts and discussion, I find that the findings and later on holding by the Adjudicating Authority regarding non admissibility of the abatement under the said notification is bad in law.

9. In view of the facts and discussion herein foregoing paras, I hold that impugned order confirming the demand of Service Tax of Rs. 28,46,459/- under Section 73(2) of Finance Act,1994 alongwith interest under Section 75 of the Finance Act, 1994 and imposing of various penalties under the Finance Act, 1994 is set aside being not sustainable in eyes of law.

10. The appeal filed by the appellant is thus, allowed in above terms.

(Gopi Nath)
Commissioner (Appeals)/
Additional Director General (Audit)

सत्यापित,

प्रवीण पोपट
अधीक्षक (अपील्स)

To,

M/s. Lorenzo Vitrified Tiles Pvt. Ltd.,
National Highway, Opp. Omkar Petroleum,
Morbi -363642

Copy To:-

1. The Chief Commissioner, CGST, Ahmedabad Zone, Ahmedabad.
2. The Principal Commissioner, CGST, Rajkot.
3. The Commissioner, CGST, Appeals, Rajkot
4. The Deputy Commissioner, CGST(Previously *Central Excise* & Service Tax Division), Morbi (Adjudicating Authority).
5. The Assistant Commissioner, Systems, CGST, Rajkot
6. Guard File.
7. P.A. File.