::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

सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/79/RAJ/2017	**11/D/ST/2016-17**	**27-01-2017**

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

RAJ-EXCUS-000-APP-027-2018-19

आदेश का दिनांक / Date of Order:	**20.04.2018**	जारी करने की तारीख / Date of issue:	**23.04.2018**

Passed by **Shri Chandrakant Valvi, Commissioner , Central GST & Excise, Bhavnagar**

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 चन्द्रकान्त वलवी, आयुक्त, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क ,भावनगर 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 Chandrakant Valvi, Commissioner , Central GST & Excise, Bhavnagar 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** :-

M/s. Atul Motors P. Ltd., Opp : Jadeshwar, NH-8, Near International Ceramic, Wankaner 363 621,

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 अपीलें सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- ३८००१६ को की जानी चाहिए ।/

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

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) 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 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 अंतगत 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 मामलो 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 प्रॉवधानों 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

:: ORDERs IN APPEAL ::

M/s. Atul Motors Pvt Ltd., Opposite Jadeshwar, N.H. 8, Near International Ceramic, Wankaner, holding the Service Tax Registration No AADCA1551ASD014, has filed present appeal against the Order-In-Original (hereinafter referred to as **" the impugned orders"**) passed by the respective adjudicating authority (**hereinafter referred to as "the lower adjudicating authorities"**) as under :

Sr No.	Appeal No.	OIO No. & Date	Adjudicating Authority	Amt. Involved	Period involved
A	B	C	D	E	F
1	79/RAJ/2017	11/D/ST/2016-17, dtd 27.01.2017	D.C., C.Ex. & S.Tax Divn. Morbi	3,60,403/-	01.07.2012 to 31.03.2015

2. Briefly stated facts of the case are that the appellant is a dealer of M/s. Maruti Suzuki India Ltd and a service provider and holding separate service tax registration for different business units at different places. The inquiry initiated by DGCEI, Rajkot, revealed that Appellant from the above registered business premises was collecting **service charges** of **Rs.6400/-** per vehicle from their customers as **"handling charges"** and did not pay service tax for the period from **01.07.2012 to 31.03.2015**. The services rendered by the Appellant appeared to be taxable services with effect from 01.07.2012 under Section 65 (B) (44) of the Finance Act, 1994 (hereinafter referred to as "the Act".) Accordingly, show cause notices was issued to the Appellant demanding service tax as mentioned in 'Column E' of the Table hereinabove under Section 73 of the Act along with interest under section 75 of the Act and penalty under Section 78 of the Act. This show cause notices was adjudicated vide impugned order by the lower adjudicating authority confirming demand of service tax along with interest and imposing penalty under Section 78 of the Act.

3. Being aggrieved with the impugned order, the appellant preferred the present appeal mainly on the following grounds:

(i) Service charges collected by the appellant were nothing but expenses incurred by them prior to sale of vehicle and subsequently recovered from the customer at the time of sale of vehicle, without providing any service whatsoever.

(ii) Activities undertaken by them from the stage of receiving the car/ vehicle and upto the delivery of the same to their customer were nothing but services availed by them for themselves only since at the time no car/ vehicle were apportioned to any customer.

(iii) Even though activity of selling car without charging 'service charges' was

possible, however, recovering 'service charges' without selling car was not possible, meaning thereby, that recovering service charges and selling of cars were mutually integrated and bundled.

(iv) Adjudicating authority has ignored the clarification given at last Para of Circular dated 05.03.2003 which says that 'any activity of sales dealer at the pre-sale stage or at the time of sale will not come under the purview of service tax.

(v) As appellant had not provided any services to their customer and hence impugned order is against the provisions of Section 66B of the Act read with Section 65B(44) of the Act; that the appellant indeed received some consideration in form of "service/handling charges" from their customers at the time of sale of vehicle which was not for any activity carried out by them but was for the recovery of expenses (like unloading expenses, washing expenses, pre-delivery inspection expenses, petrol expenses, etc.) incurred by them for services availed prior to the sale of vehicle; that when these expenses were originally incurred by them the prospective customer (from whom these expenses have been recovered as 'service/ handling charges' at the time of sale of vehicle) was nowhere in picture i.e. at the time of incurring of these expenses, no vehicle had been apportioned to the particular prospective customer; that at the time of recovery of said 'service/ handling charges' there was never any relation of 'service provider' and 'service availer' between the appellant and the prospective customer and therefore confirming recovery of service tax on such amount is untenable.

(vi) They are primarily providing services of selling car/ vehicle (trading of goods) and services in dispute are sundry services; that services of 'trading of goods' is essential character of such services and hence provision of other sundry services are naturally bundled services in the ordinary course of business; that in their case main services is integrally connected with the provisions of other sundry services; that they have provided bundled service in the present case; that activity of "trading of goods" is covered under the negative list of services under the Act and hence impugned order confirming the demand on sundry services is against the provisions of Section 66F of the Act.

(vii) It is a settled legal position that any expenditure incurred by a dealer before sale and to make the goods available to the intending customer at the place of sale is part and parcel of the taxable turnover liable to sales tax/ vat unless exempted otherwise; that since such expenditures are part and parcel of the taxable turnover liable to sales tax/ VAT, the no service tax was payable on such expenditure. Appellant referred decision of Hon'ble Supreme Court in the case of M/s. Dyer Meking Breweries Ltd reported as (1970) 3 SCC 253, M/s. Kirampudi sugar Mills Ltd reported as 86 STC 1991, M/s. Arvind Motors reported as 59 STC 337 . Appellant further reported service tax case laws in the case of M/s. Automotive Manufactures reported as 2015 (38) STR 1191 (Tri-Mumbai) and M/s. Indian Oil Corporation Ltd reported as 2015 (38) STR 501 (Tri-Mumbai). Appellant submit that "handling charges' are part of "ex showroom price"

and relied upon the decision of Hon'ble CESTAT in the case of M/s. Maruti Suzuki India Ltd reported as 2015 (315) ELT 397 (Tri-Delhi).; that therefore, confirming service tax on "handling charges" which is a part of "ex showroom price is not tenable; that they have now accepted the legal position that such 'service/ handling charges' are part of their sale price of the vehicles and accordingly, the same have been absorbed in their basic price and in support of their submission appellant produced sample copies of recent sale invoices.

(viii) CBEC vide Circular No. 699/15/2003-Cx dated 05.03.2003 has categorically clarified that any activity of sales dealer at the pre-sale stage or at the time of sale will not come under the purview of service tax; that the circular is applicable in their case even after regime effective from 01.07.2012.

(ix) The impugned order is partly barred by limitation as there is no ingredients to invoke extended period of limitation; that it was their bonafide belief that such 'service/handling charges' were not liable to service tax and therefore, there is no suppression of facts or willful mis-statement on their part; that interest and penalty is also not imposable as recovery of service tax itself is unsustainable in law.

4. Personal hearing in the matter was attended by Shri Dinesh Kumar Jain, Chartered Accountant, to represent the appeal. Shri Jain reiterated grounds of appeals alongwith various judgments and referred Board's circular No. 699/15/2003-Cx dated 05.03.2003 and requested to drop the case.

FINDINGS

5. I have carefully gone through the facts of the case, the impugned order, appeal memorandum and the submissions made by the appellant in writing as well as orally at the time of personal hearing. The issue to be decided in the matter is whether appellant is liable to pay service tax on the service charges recovered by them from their customers or not?

6. I find that Appellant has contested the issue on the ground that charges recovered by them are towards expenses incurred prior to sale of vehicle and subsequently recovered from the customer without providing any service. Appellant also contended that activities undertaken by them from 'the stage of receiving the car' to 'the delivery to the customer' were services availed for themselves and not apportioned to the customer. I find that the argument become void as much as appellant is charging a fixed amount of Rs.6400/- per vehicle from the customer. Once a consideration is charged and recovered, over and above price of the goods, it can not be said that the activity carried out by them is for themselves. I further find that Appellant has

contradictions in their argument that their activity is 'sundry services' provided with main services of "trading activity" thus treating the activity as provision of services to the customers. It is contended that at the time of incurring expenses (which are recovered as "handling charges") no vehicle had been apportioned to any customer and there is no relation of 'service provider' and "service receiver". I find that once customer agrees to pay the amount, relation of 'service provider" and "service receiver' stands established and amount so charged is consideration for such services and therefore, I do not agree that the services are availed by them and no services are provided by them to customers. I also find that recovery of separate charges as "service charges" in addition to sale value of the goods negates the argument of 'bundled services'. The reliance placed on CBEC Circular No. 699/15/2003-Cx dated 05.03.2003, is also misplaced in as much as clarification is given with regard to activity of Teflon coating by sales dealer distinguishing it from services classifiable under "Authorized service station" prior to negative list regime introduced with effect from 01.07.2012 under the Finance Act, 1994.

7. Appellant has contended that the recovery of service charges are part of sales and any expenditure incurred by a dealer before sale is part and parcel of the taxable turnover liable to sales tax/ VAT. Appellant relied upon the Hon'ble Supreme Court's decision in the case of M/s. Dyer Meaking Breweries Ltd reported as 1970 (3) SCC 253. I find from the sample invoices dated 18.01.2014 & 30.03.2014 submitted along with the Appeal Memorandum that charges are recovered separately as "Service Charges" and no Sales Tax or VAT has been paid.

7.1 The Invoices show that VAT @12.5% is paid by the Appellants on assessable value of the vehicles and Rs.6400/- shown as service charges, which has not been included in the assessable value for VAT and has not been considered for assessment of VAT at all. The Appellant produced a copy of Hon'ble Supreme Court's decision in the case of M/s. Dyer Meaking Breweries Ltd, [1970 (3) SCC 253]. Relevant portion of the judgment reads as under:-

> *"5. It is common ground that the sale of the liquor took place in Ernakulam. The company arranges to transport liquor for sale from the factories to tits warehouse at Ernakulam. IT was not brought for any individual customer. Al the expenditure incurred is prior to the sale and was evidently a component of the price for which the goods were sold. It is true that separate bills were made out for the price of the goods ex-factory and for 'freight and handling charges". But, in our judgment, the Tribunal was right in holding that the exemption under Clause (f) of Rule 9 applies when the freight and charges for packing and delivery are found to be incidental to the sale and when they are specified and charged for by the dealer separately and expenditure incurred for freight and packing and delivery charges prior to the sale and for transporting the goods from the factories to the warehouse of the company is not admissible under rule 9(f). Rule 9 (f) seeks to exclude only those*

charges which are incurred by the dealer either expressly or by necessary implication for and on behalf of the purchaser after the sale when the dealer undertakes to transport the goods and to deliver the same or where the expenditure is incurred as an incident of sale. It is not intended to exclude from the taxable turnover any component of the price, expenditure incurred by the dealer which he had to incur before sale and to make the goods available to the intending customer at the place of sale."

7.2 I find that above decision of Hon'ble Supreme Court was dealing with the provisions of Kerala General Sales Tax Rules,1963. The matter was relating to expenses incurred towards transportation of liquor arranged by the appellant and bills were raised separately in addition to ex-factory sale price and said charges were not computed by the appellant for Taxable Turn Over. Therefore, I am not able to convince myself to consider that the judgment is anyway applicable to the present case on hand. Similarly, issue involved in the decision of Hon'ble High Court of Andhra Pradesh in the case of M/s. Kirlampudi Sugar Mills [86 (STC) 1991] and Hon'ble High Court Karnataka in the case of M/s. Arvind Motors [59 (STC) 337] were also in respect of inclusion of freight charges in Taxable Turnover under Andhra Pradesh General Sales Tax Ct, 1957 and Karnataka Sales Tax Act,1957. I also find that the appellant has produced sample invoice dated 21.01.2017 to submit that "service charges" recovered by them are now absorbed in basic price. Thus, the facts not disputed are that "service charges" recovered by them were not part of the assessable value under Sales Tax/ VAT law of State Government. Thus, I find that Appellants have misplaced the reliance on these decisions as much as charges recovered by the appellant are not included in the assessable value for the VAT and these decisions are in respect of state sales tax laws and prior to introduction of service tax.

8. Appellant has relied upon Hon'ble CESTAT's decision in the case of M/s. Automotive Manufacturers P Ltd [2015(38) STR 1191) Tri-Mum)]. I find that the demand of service tax in that case was on 'handling charges' incurred in connection with procurement of goods, which are included in the value of the goods sold and sales tax/ VAT liability was discharged by the assessee on the value inclusive of the handling charges, whereas, in the present case VAT/Sales Tax is not assessed on value inclusive of service charges recovered by the Appellant.

8.1 The Hon'ble CESTAT's decision in the case of M/s. Indian Oil Corporation Ltd reported as 2015 (38) STR 501 (Tri-Mumbai) also is not applicable as in the said case, demand of service tax was on the Contractual Value of Sale Price where Sale Price between two parties was arrived at by treating a pre-determined expense of handling of cargo under an agreement and where expenses incurred by the Appellants were for their own purpose.

8.2 Since, the two case laws discussed above deal with different set of facts, they can not be made applicable to this case on hand. Thus, I uphold the confirmation of demand under Section 73 and payment of interest under Section 75 as held under the impugned orders.

9. Regarding extended period, I find that negative list regime is very unequivocal, and except the categories mentioned therein, no activity is entitled for exemption from being levied service tax leaving no scope to harbor any doubt. I find that the Appellant has recovered the amount from the customer by stating it as 'Service charges" in their invoices, however, appellants argued that the said recovery is towards sales of goods and hence they did not pay service tax on this amount. Therefore, it is evident that there was/is no ambiguity in law and the appellants an established private limited company, managed by professionals have distorted law to evade payment of service tax and did not bring the relevant material facts to the notice of the department at any point of time. In this context, I rely on the Order passed by the Hon'ble CESTAT, Chennai, in the case of M/s.TVS Motor Co. Ltd. reported in 2012 (28) S.T.R. 127 (Tri. - Chennai), held as under:

> ***"13.*** *So far as ground of no penalty advanced by learned counsel is concerned there is nothing on record to show that the appellant avoided its liability bona fide when it is an established business concern with vast experience in application of provisions of Finance Act, 1994. Its returns did not disclose bona fide omission. Rather facts suggest that knowable breach of law made the appellant to suffer adjudication. Accordingly, no immunity from penalty is possible to be granted on the plea of tax compliances made which was found to be a case no payment of tax on the impugned services provided during the relevant period."*

9.1 Considering the facts of the case, required ingredient of suppression of these facts, mis-statement etc. for invoking extended period is found to be existing in this case and such suppression was not without intention to evade the tax. I, therefore, do not subscribe to the contention of the Appellant and reject the same being devoid of merits.

10. I also find that the lower adjudicating authority has rightly imposed penalty under Section 78 upon the appellants as they have suppressed the facts as discussed in foregoing Para by not declaring the material facts before the department. Hence, penalty imposed under Section 78 of the Act with option to pay reduced penalty @25% of demand confirmed, if service tax is paid alongwith interest and reduced penalty within 30 days of receipt of order is correct, legal and proper.

10.1 As discussed in Para 9, the appellants have failed to declare the correct information in their ST-3 returns for the relevant period and therefore imposition of penalty on the appellant under Section 78 of the Act is also justified.

11. In view of above discussion and findings, I uphold the impugned orders *in toto* and reject the appeal filed by the Appellant- assessee.

१२. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।

12. The appeal filed by the Appellant stand disposed off in above terms.

सत्यापित,

लिपतेष उपाध्याय
अधीक्षक (अपील्स)

(चंद्रकान्त वलवी)
आयुक्त

By R.P.A.D.
To

M/s. Atul Motors Pvt. Ltd, Opp. Jadeshwar, N.H. 8, Near International Ceramic, Wankaner-363 621	मेसर्स अतुल मोटर्स प्रा लिमिटेड, N.H. 8, जड़ेश्वर के सामने, इंटर्नेसनल सिरामिक के पास, वांकानेर -363 621

Copy to:-

1. The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot.
3. The Addl. Commissioner, CGST Rajkot
4. The Deputy Commissioner, CGST Division Morbi-I/ Morbi-II
5. The Superintendent, AR-Wankaner (Through DC , CGST Divn. Morbi)
6. Guard File.