

आयुक्त (अपील) का कार्यालय, दिल्ली का पता एवं संपर्क सूचनाएं
 C-O THE COMMISSIONER, APPEALS, CENTRAL GST & EXCISE

एजेंसी का. सी. ए. 1, टावर 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100
 34, बंगला रोड, दिल्ली-110002
 भारतीय राजस्व सेवा का
 टेलीफोन नं. 011-23741211-14
 फ़ैक्स नं. 011-23741215-16

अपील नं. 100/2016-17

1. अपील नं. 100/2016-17 का अपीलकर्ता का नाम: श्री. राजेश कुमार शर्मा
 2. अपील नं. 100/2016-17 का अपीलकर्ता का पता: 100/2016-17, दिल्ली-110002
 3. अपील नं. 100/2016-17 का अपीलकर्ता का संपर्क नं.: 011-23741211-14

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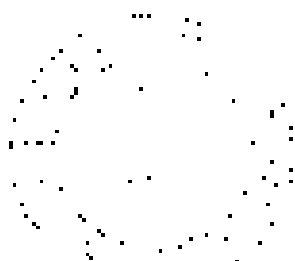
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अभिमान का अर्थ है... (The meaning of pride is...)

The meaning of pride is... (The meaning of pride is...)

31

अभिमान का अर्थ है... (The meaning of pride is...)

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2. ORDER IN APPEAL :

M/s. Shivan Marine Services, registered office at 5, D. D. Tower, Charantra, 12, rd. (W.D. Bankat) near their weigh bridge at Maslakar Fort, (hereinafter referred to as "the appellant") has filed the present appeal against Order No. 49/ADC/KAC/2016-17 dated 22.03.2017 (hereinafter referred to as "the impugned order") passed by the Additional Commissioner, Central Excise & Service Tax, Mumbai, Maharashtra, India, (hereinafter referred to as "the lower adjudicating authority").

2. Briefly stated facts of the case are that the appellant having built Weigh Bridge at Maslakar Fort. During the course of search operation carried out by the team of officers of Preventive Section, Central Excise & Service Tax, Mumbai, various documents & records were reviewed. On 07.04.2016 i.e. on 22.03.2016-17. On conclusion of the investigation, it transpired that the appellant had not paid / Short paid the Service Tax on providing 'Weighment Service', classifiable under the service category of 'Business Support Service'.

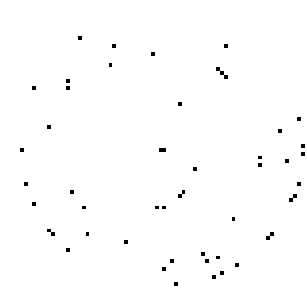
3. Above observation culminated into issuance of SCN No. 4.57/ST-AD-1/ST/RC/T/ADC/PY163/2016-17 dated 19.06.2016 to the appellant by the Department for non payment / short payment of service tax to the tune of Rs. 76,86,529/-, which was decided by the Department vide the impugned order passed by the lower adjudicating authority, wherein the Department has confirmed the demand of service tax of Rs. 76,86,529/- alongwith interest and also imposed penalties under Section 76, 77(1), 77(2) and 78(1) of the Finance Act, 1994.

4. Being aggrieved, appellant has preferred the present appeal and mentioned that they are having a weigh bridge within the port area at Maslakar Fort; that they have been doing the work of weighing of imported cargo, mainly iron, within the port area; that Gujarat Maritime Board (GMB) is the Custodian of the Maslakar Fort appointed under Section 45 of the Customs Act, 1956. That being weighbridge within the port area, is one of the prime requirements of Gujarat Maritime Board under Handling of Cargo in Customs Area, Regulation, 2005, that the Gujarat Maritime Board has given licence for use for the set up and operation of weigh bridge in the port area; that they submitted copy of departmental lease agreement dated 15.12.2013, that GMB has renewed their lease period for 10 years i.e. from 01.12.2011 to 31.12.2020. In the said lease agreement, they could not utilize the said plot for any other

purpose except operation of weighbridge; that the said contractor itself clarify that the said weighbridge has been set to fulfil the statutory requirements as per Haddim or Cargo II Customs Area Regulations, 2006; that as per said Form, all cargo for porters import coal and stevedores via United Shippers Limited, Staff Supplies and handling of cargo, the cargo from the port area; that either the tractor or the stevedores bring the trucks for handling and transportation of coal from port area to different locations; that they have nothing to do with the loading / unloading or transportation of the cargo; that they simply carried out Weighment work as per cargo that is order to determine the actual weight of loaded cargo; that they are not involved in bringing the empty trucks before loading of the cargo to their weighbridge to get the weight of the empty truck and after loading of coal from jetty area, again the truck drivers bring the loaded truck to the weighbridge for weighing purposes; they receive consideration for Weighment of cargo from the truck drivers; that the adjudicating authority held that the service rendered by them falls under the category of Business Support Service as defined under Section 65 (104) and taxable under Section 65 (105) (aa); that the Adjudicating Authority also observed that after the introduction of negative list w.e.f. 01.07.2012, such Service has been defined under rule 44) of the Finance Act, 1994 and the same provided by them is neither included in the negative list nor the same are exempted under Notification No. 25/2012-1-57 dated 20.06.2012 w.e.f. 01.07.2012; that the activity of weighing in the port area is not a Business Support Service; that the adjudicating authority failed to consider that the weighment activity carried out by them does not fall within the definition/category of Business Support Service as defined under Section 65 (104) (aa) and as per Section 65(104) of the Finance Act Support service of business and commerce; that as per para 2.5 of the Circular No. 109/2/2009-1 dated 23.09.2009, Business Support Service is a generic service of providing support to the business or commerce of the service recipient; that in other words the principal activity is to be undertaken by the client while assistance or support is provided by the service provider; that the said aspect has also not fulfilled in their case; that they are having their weighbridge and undertaking the weighing of cargo and are carrying out any activity, which has been prohibited by any business entity; that they have not provided any kind of support service to any business entity or any other person; that they have carried out activity of Weighment of imported cargo i.e. coal within the port area at Haylad; that it is mentioned in the show cause Notice at para 2.2 that in their statements, both Sri Shambhulingi Kishorishet Chaudhari and Sri. Madanahar Desaiyathal Reddy, took

drivers, stated that they had come for Weighment of their truck and they used to pay the charges mentioned in the computerized Weighment bill, issued by the Union after Weighment of their loaded vehicles that are paid with a check. It is mentioned that during the course of investigation, letters to the various service providers at SIA Solapur were written on 27.07.2018 to collect data for Service Tax return for the period 2017-18 to 2018-19 and most of the service providers denied the direct connection with SIA Solapur; that thus, they have not provided any service to any business entity. In all cases the weighing bills were issued to the truck drivers and the truck drivers had put the charge of Weighment that they enclosed sample copies of such bills; that in case of M/s. Union Shoppers Limited, Solapur, the bills were raised for Weighment of goods loaded in their trucks within the port area. That sample copies enclosed; that it is clear that the activity carried out by them is not a service provided to support any business activity by any Business entity; that the facilities of weighing, office premises etc., are owned by them and used within the port area as per the permission / license agreement made by the Port Authority and Controller of Sugarcane Marketing Board; that the same were neither given on rent, lease or on the basis of any regular/annual charge to any business entity by them; the weighing services provided by them are not given in support of any person and therefore, the Service Tax demand in respect of their alleged activities as Business Support services is not sustainable; that the Order-in-Original does not discuss at all as to how their activities fit under the definition of Business Support services; that the activity of Weighment of cargo within the port area is not covered by the definition of Business support services; that their activity is not service but a statutory requirement; that their activity carried out within port area can be defined under Port Services; that the department's contention that their activity fall under the Business Support Service is not tenable, on the basis of expanded definition of Port Services under section 65(132) of the Finance Act, 1994; that it has been clarified in para 2.5 of the Circular No. 10943/2005-5.T, 21.12.2009, that in Business support services, the principal activity is to be undertaken by the client and the support is provided by the service provider; that they rely on the case law of Centre for Entrepreneurship Development versus CCE, Thane, reported at 2014(14) STC 373 (1)(29); that in the case, their activity is not in supporting nature; that the activity of Weighment is an independent activity of Weighment of imported goods as per the requirement of different contracts drawn; that neither the weighing machine nor any accessory or the facilities, where billing work has been done, were given to any other person rather individual or any firm in any manner in order to support their business.

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activity; that their activity of weighing cargo in the port area is not taxable service; that weighing work within the port area is not a service and a facility provided by the Coast Marine Board Under Handling of Cargo in Customs Areas Regulation, 2009; that weighing is a statutory requirement and therefore not a service; that they have not been appointed as Customs Cargo Service Provider for custody of imported goods or exported goods; that the requirement of weighing cargo within the port area is one of the conditions under Handling of Cargo in Customs Areas Regulation, 2009 as prescribed under Regulation 5; that the quantity of cargo loaded is the requirement of CME to manage the port area for storing cargo in the port area as well also for the importer or the shippers to confirm the quantity of cargo despatched or transacted; that the activity carried out on them, is one of the statutory requirements under Handling of Cargo in Customs Areas Regulation, 2009; the activity is not covered under service tax; that they rely on the provisions of Section 148(a) Handling service Commissioner of C.E.S. Group, reported in 2010 (11 S.T.R. 296 (Trib. Del.)); III No's New Era Handling Agency versus Commissioner of C.E.S. Panel, Goa reported in 2016 (44 S.T.R. 273 (S.C.)); that the addition of 300kg per tonne by the said scale laws were not applicable as the tonnage and volume measurement procedures are different; that the adjudicating authority failed to understand that the CME is a government agency and CME has been granted a permission to them for weighing as the same is one of the conditions for creation of a port Handling of Cargo in Customs Areas Regulation, 2009; that the requirement of having weight tag in the form of a statutory requirement of law since the taxable period cannot be invoked as they were under bona fide belief that their activity is not taxable; that they have been doing weighing activity within the port area and under the permission of the port authority hence had the SWI has been under statutory obligation to provide the weighing facility as per the Handling of Cargo in Customs Areas Regulation, 2009; that the respondent is of the view that since the activity is a statutory requirement and hence not taxable; that the department has earlier headed case against other tax assesses and not the Service Tax on Weighment activity under Business Auxiliary service; that the department's stand was dropped by the Tribunal and hence that the addition cannot stand; that they rely on the case law of (1) Comm. of C.E.S. (Kerala) versus Beezack (Shriani) Castles, P. Ltd., reported in 2008 (10 S.T.R. 212 (Trib. Del.)); (2) Commission of C.E.S., Chandigarh versus Beezack Computers, reported in 2005 (12 S.T.R. 568 (Trib. Del.)); (3) Commissioner of C.E.S., Chandigarh versus Northern Computer, reported in 2009 (16 S.T.R. 34 (Trib. Del.)); (4) Commissioner of C.E.S., Chandigarh versus Karan Computers, reported in 2008 (12 S.T.R. 293 (Trib. Del.)); that there has not been any new firm intention to

exempt from payment of Service Tax and therefore extended period can not be created. That finding supported by them which was required to be resolved before the department; that they have been under reasonable belief that the activity is not taxable; that therefore in their case, extended period can not be created; that they rely on the case law of *Jai Shree Udyog, versus Commissioner of C.E.S., Raipur*, reported in 2011 (130) E.L.T. 301 (Trib. Del.), which was maintained in the Honble Supreme Court and reported in 2012 (144) E.L.T. 4298 (S.C.) (iii) *Commissioner of C.E.S., Ludhiana versus Gauri Charan B. Singh, Services*, reported in 2010 (12) S.T.R. 60 (Trib. Delhi); *Dunlop Tyres Industries versus Commissioner of C.E.S., Madurai*, reported in 1996 (10) E.L.T. 305 (Tribunal), that beyond the normal period, the demand is time barred; that the period involved in the above case books is from 2011-12 to 2015-16 and the Show Cause Notice was issued on 19.10.2016; that the normal period of one year of demand on issuance of Show Cause Notice has been extended from one year to eighteen months with effect from 28.05.2012 and the same has been extended to further months with effect from 14.05.2016; that period involved is from 2011-12 to March, 2015 and therefore beyond one year till May 2012 and then after beyond 6 months the demand is barred; that the Show Cause Notice is dated on 19.10.2016; the period prior to 19.04.2015 is time barred; that demand of service tax of Rs. 51,01,372/- is below the limit of limitation and can not be demanded; that after deducting the demand, prior to normal period of 18 months, it comes to Rs. 10,00,160/- only and the demand of Service Tax of Rs. 51,01,372/- is barred by the limitation of time and can not be demanded; that as their activity is not a taxable service, therefore there is no liability of Service Tax on them and therefore the liability under Section 76, 77(1), 77(2) and 78 of Finance Act, 1994 as imposed vide the C.O. is required to be set aside; that penalty under section 78 of the Finance Act, 1994 can not be imposed upon them; that they were under reasonable belief that their activity of Weighment is not a service, as the same is not, any this is in the portion and has been out of the statutory requirement under Handling of Cargo in Customs Area Regulation, 2005. that the Appellant was under reasonable belief that the said activity is not taxable service as the task or operation of procurement of C. Ex. Jalandhar versus Shreeji (Shreeji Carrying & Ld.), reported in 2008 (132) E.L.T. 213 (Trib. Del.), (ii) Commissioner of C.E.S., Chandigarh versus Doodlak Computers, reported in 2009 (12) S.T.R. 399 (Trib. Chand.) (iii) Commissioner of C.E.S. Chandigarh versus Northern Computer, reported in 2009 (13) S.T.R. 38 (Trib. Del.) (iv) Commissioner of C.E.S. Chandigarh versus Banker Bhawan Computers, reported in 2008 (12) S.T.R. 424 (Trib. Del.); that in all the said case laws it was held that the

activity of Weighment is not a 'supply of services' and therefore the appellant has strong reasonable belief that the activity of Weighment is not a service; that there was not a voluntary 'de-termination to cease from payment of service tax and hence no suppression of material fact which was required to be disclosed before the department; that no engagement for imposing penalty under section 78 of the Finance Act, 1994 is latent in this case and therefore the same can not be imposed; that there has been reasonable cause for non-payment of Service Tax and therefore penalty under Section 78 of the Finance Act is not imposed upon them; that the law is clear. The case law viz. (i) Commissioner of Central Excise versus Define Energy Co., reported in 2014 (36) STR 23 (Ct.AT); (ii) Bussone Industries Limited versus Commissioner of Central Excise, Customs and Service Tax, Dehradun, reported in 2014 (41) STR 107 (Trib. Chand.); (iii) Jany Auto Parts versus Commissioner of Central Excise, Raigarh, reported in 2011 (36) STR 113 (Trib. Chand.); (iv) Park's Colours versus Commissioner of Central Excise, Pune-II, reported in 2010 (30) STR 227 (Trib. Chand.) are examples that in the same line, penalties under section 70, 76, 77(1) and 77(2) of the Finance Act, 1994 are not imposable on them; that they were never reasonable cause regarding taxability of the activity of Weighment, therefore they have not been paying Service Tax and not filing returns and therefore, penalties under section 70, 76, 77(1) and 77(2) of the Finance Act, 1994 are not imposable on them; that they rely upon the case law of C.O. Engineering Limited versus C.E. Chemical, reported in 2006 (17-1) STR 19 (Trib. LB).

5. Personal hearing in the matter was fixed on 22-09-2019, which was attended by Mr. Anil M. Shrivastava, Chartered Accountant, who reiterated a summary of appeal and submitted certain submissions regarding the facts already contained in the grounds of appeal, and he further requested to allow the appeal.

6. I have carefully gone through the facts of the case, the grounds of appeal, merits and demerits and the submissions made by the appellant. I find that as the appellant has deposited an amount of Rs. 1,54,33,000/- vide Challan dated 10.07.2016 and 17.03.2017, which is in excess of mandatory 7.5% of the Service Tax, that the fact there is compliance to requirement of Section 4-(1) of Central Excise Act, 1944 as made applicable to Service Tax matters, vide Section 62 of the Finance Act, 1994. Therefore, I propose to allow the appeal on merits.

7. The United Issue to be decided in the present appeal is whether the appellant is liable to pay the Interest & Judicialing Act, 1993, where a fine Demerit of Rs. 27,36,000/- is levied and also get a interest and penalties imposed under

Sections 61, 62(1), 77(2) and 78(1) of the Finance Act, 1991, cannot be read a-verse.

7.1 It is noticed that during the course of inquiry, it was concluded that the Weighment service carried out by the appellant being envisaged under the Port Area of Navlekhi port is classifiable under the taxable category of 'Business Support Services' or 'Others' under Section 65 (104a) of the Finance Act, 1991 read with Section 65(105)(xxv) of the Finance Act, 1991.

7.2 It is contended by the appellant that merely Weighment of cargo service would not amount to support services of business or commerce and therefore they are not liable to pay service tax under this category. To emphasize the issue better, reproduce the definition of 'Support Services of Business or Commerce' as defined under Section 65 (104a) of the Finance Act, 1991.

7.3 To ascertain as to whether the Weighment service covered under the taxable category of 'Business Support Services' or 'Others', I have gone through the definition of 'Business Support Service' as defined under Section 65 (104a) of the Finance Act, 1991 read with Section 65(105)(xxv) of the Finance Act, 1991, which is reproduced as under :-

65(104a) "Support services of business or commerce or means services provided in relation to business or commerce and includes provision of prospective customers, financial and administrative services, printing and publishing services, information and booking of services, collection, managing distribution and logistics, business administration, management services, accounting and information of transactions, operation assistance for marketing, coordination of activities, sales and selling, public relations, customer support services and other business or commercial."

Explanation: For the purposes of this clause, the expression "information services" includes providing data along with office facilities, computer software management, services of quality management, statistical services, internet and business website, portal and similar."

7.4 Hence, as per Section 65(105)(xxv) of the Finance Act, 1991, "taxable service" means any service provided or to be provided to any person or any other person, in relation to support services of business or commerce, in any manner'. Thus, on careful study of the definition of support services of business or commerce, it is clear that the services relating to support of a business or commerce in any manner is taxable service, which also includes some special services by way of 'and includes ...', which signify the same or other services also. Now, the Weighment service provided by the appellant in relation to

analyzed in view of above relation. On perusal of aforesaid legal definition, it can be seen that the nature of services which are proposed to be covered under the term under this category, are the services rendered by the service providers to the service receivers by way of providing support to business / commerce of the service receiver, and that to the extent sufficient to be appellant that may have particular Weightment Service on the truck drivers. Thus that in order to determine the actual weight of loaded cargo, the truck driver's uses 15 using the empty truck to go below loading scale range to the weighbridge of the Appellant and get the weight of the empty truck and after loading of coal from coal area, again the same truck driver bring the loaded truck to the weighbridge of the Appellant for Weightment purpose for which, the Appellant provided cash consideration for Weightment of cargo. It can find that they received the cash consideration from the truck drivers. Thus, by definition "Business Support Service" is a generic service of providing support to the business or commerce of the service receiver. In other words the principal activity to require to be undertaken by the client while assistance or support is provided by the taxable service provider. In the instant case the Appellant owner of weighbridge and provided Weightment services to various truck drivers, which is not an auxiliary or assistance to client's business activity. The activity of Weightment carried out by the Appellant is an independent activity, which is a characteristic of different service's nature to ascertain as to how much quantity loaded in each truck. Further, it is evident that the Appellant has carried out all the activities within the purview of Weighment, it is also evident on record that the Appellant has provided Weightment services for imported cargo originating from the foreign countries. Thus, the principal activity carried out by the Appellant is Weightment Service, and they have no concern with the sale or marketing of goods. Further, the Appellant has not provided any assistance or support to their Customers viz. Truck Drivers. Thus, it is held that the Weightment services carried out by the Appellant is not covered under the "Business Support Service" as defined under Section 65 (10)(c) of the Finance Act, 1994 read with Section 65(3)(a) of the Finance Act, 1994.

It is further held that the above facts are also being supported by the following case relations issued by the Hon'ble, Hon'ble and Hon'ble by the Tribunal that marketing of weighbridge for issuing Weightment sheet is not covered under the taxable category of "Business Auxiliary Service".

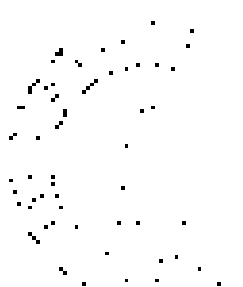
- (1) *Commissioner of Central Tax, Jaipur vs. Jhanshi*
- (2) *State of Gujarat v. Ltd.*, reported at 2031 (13) S.T.R. 214

- (ii) Commissioner of Central Excise, Chandigarh versus Dermal Computers, reported at 2008 (12) S.T.L. 562
- (iii) Commissioner of Central Excise, Chandigarh versus Northern Computer, reported at 2009 (13) S.T.L. 34
- (iv) Commissioner of Central Excise, Chandigarh versus Farid Bijan Computers, reported at 2009 (12) S.T.L. 741

7.5 In view of cases, I am of the considered opinion that the weighment services covered by the Applicant within the port area of Navlakhi is not covered under the taxable category of Service Tax under 'Business Support Service' as defined under Section 65(104) of the Finance Act, 1994 read with Section 65(105)(aa) of the Finance Act, 1994.

7.7 Further, I also find that applicant has contended that weighment services provided by them is one of the statutory / mandatory requirements and therefore no service tax is leviable thereon. I noticed that the applicant have carried on the work of weighing services on the weigh bridge installed within the port area of Navlakhi port. The Gujarat Maritime Board (GMB) is appointed as the Custodian of the Navlakhi Port under Section 15 of the Customs Act, 1962. The Board has given lease to the Applicant on lease basis to set up and operation of weigh bridge in the port area of Navlakhi. The applicant has commenced functioning weigh bridge within the port area in compliance as prescribed under Handling of Cargo in Customs Area Regulations, 2009 notified vide notification No. 26/2009-Customs (HT) dated 17.11.2009. To ascertain as to whether the weighing service is statutory requirement or otherwise, I have gone through the Handling of Cargo in Customs Areas Regulations, 2009, wherein under Rule 3, various conditions prescribed by the Government, which reads as under:-

1. Conditions to be fulfilled by an applicant for storage and handling of imported or export goods in a customs area: Any person who intends to be approved as a Customs Goods Service provider for custody of imported goods or export goods and for handling of such goods in a customs area, hereinafter referred to as the applicant, shall fulfill the following conditions, namely:-
 - (i) The applicant shall provide the following to the satisfaction of the Commissioner of Customs:-
 - (a) Infrastructure, equipment and materials requisite for loading, unloading, stacking, handling, affixing and detaching of containers, storage, dispatch and security of containers and cargo etc. Handling;
 - (b) Sufficient equipment for heavy duty equipment for use in the operations and stacking areas;
 - (c) Building for Customs office, Customs IT cell and Data Interchange (EDI) Service Centre and user agencies with



- Basic amenities and facilities;
- (c) storage facilities, separately for imported, export and transshipment goods;
- (d) cable cranes with separate cranes and carts;
- (e) adequate parking space for vehicles;
- (f) secondary roads;
- (g) internal service roads;
- (h) electronic weigh-bridge and other weighing and measuring devices;
- (i) automatic system for location and access of all goods, and processing of documents;
- (j) computer air conditioning, space and power back up, reflexive networking and other equipment for secure connectivity with the Customs Automated system; and for exchange of information between Customs Community partners;
- (k) facilities for auction, including by auction, for disposal of unclaimed, unclaimed or abandoned cargo;
- (l) facilities for installation of scanning equipment;
- (m) availability of access routes to enable uninterrupted access in all circumstances; and
- (n) such other facilities as the Commissioner of Customs may specify having regard to the custody and handling of imported or export goods in a customs area;
- (o) fire, safety and special services for loading, unloading, unloading and stacking of the cargo for the projected capacity and for the administration and other operations as may be required in compliance with any law for the time being in force;
- (iii) custom to set an amount equal to the average value of goods likely to be stored in the customs area based on the projected capacity and other amount as the Commissioner of Customs may specify having regard to the goods which have already been imported by the importer or exporters.⁵

70. In going through the above said mandatory conditions prescribed under Handling of Cargo in Customs Areas Regulations, 2009, I find that at condition number (g), it is provided as "electronic weigh bridge and other weighing and measuring devices". I find that there is an electronic weigh bridge in the port area in satisfactory condition as prescribed under Handling of Cargo in Customs Area Regulations, 2009. I find also vide Notification No. 26/2014-Customs (N.T) dated 13.5.2014. Further, I also noticed that Weighment Service provided by the appellant is not for all but is restricted to the cargo available in the port area of Kandla. It is further alleged by the Department that the appellant had provided weighment services to any vehicles having a haul than local cargo. Thus, the appellant has partially fulfilled the Weighment procedures as prescribed under law. Further, I also noticed that within the port area, bulk cargo of coal is lying, which has been imported by various importers. Further, the cargo of coal has been allowed to store in specific plots available and allocated at

Navalshi port by Gujarat Maritime Board as well as Customs. Thus, it is an arrangement of Gujarat Maritime Board as well as Customs to monitor the movement of the cargo. The bulk cargo in road vehicle passes through the procedure of Weighment. It would not possible either for Customs Department or Gujarat Maritime Board to ascertain how much imported cargo has been dispatched and sent out of port and how much imported cargo has been available on the plot designated by the Customs and Gujarat Maritime Board. Further, for the Customs as well as GMB officials, it is mandatory to issue Form as to how much quantity of cargo has been dispatched from the total quantity of cargo charge given by the Customs under Section 47 of the Customs Act, 1952 and how much quantity of the cargo is remaining at plot available within the port area. Further, it is also noticed that the Navalshi port area is covered under the Customs area, for which GMB is appointed as Custodian. Further, as per Section 151 of the Customs Act, 1952, the consequences and goods in a customs area should be under control of officer of customs and therefore all the consequences within the port area fall under the control of the Customs as well as Gujarat Maritime Board. Thus, in compliance of the provisions of Section 141 of the Customs Act, 1952, Customs as well as Gujarat Maritime Board has also installed Check Post through which only vehicle and trucks can enter in the Navalshi Port and exit from the Navalshi port. At the said check post, the officers on duty mandatorily check the cargo vehicle to ascertain as to how much cargo is being loaded by the cargo vehicle from the Navalshi Port. Such Officers ascertain the Weighment of cargo on the basis of Weighment slip issued by the applicant. Without Weighment slip, the officers on duty at check post would not allow any cargo vehicle loaded with the cargo to exit from the Navalshi port. All the truck drivers have to deposit the goods note in which the quantity of the cargo as mentioned in the Weighment slip has to be declared and such goods note has to be prepared at the gate or check post and when the goods note pass, the officers on duty would not permit entry of any cargo vehicle. Further, it is also noticed that the Customs Officers used to give receipt of Customs Charge of the bulk cargo was coming out of the port area under Section 47 of the Customs Act, 1952. To maintain the quantity of the bulk of customs charge given by the Customs Officers under Section 47 of the Customs Act, 1952, Weighment slip is only the documentary evidence from which they can ascertain the exact quantity of dispatch from the Navalshi port area containing quantity available on port. Thus, the Weighment of cargo is the only mandatory requirement under Loading of Cargo in Customs Area Regulations, 2009 but also mandatory requirement for Customs as well as Gujarat Maritime Board to ascertain how much imported quantity of cargo has been dispatched from the port area and

more than 100 per centile of 2017 has been available within the term 2017.

2.3 Further, I also rely upon the judicial pronouncements of Hon'ble Supreme Court of India passed in the case of Commissioner vs. Eshwar Handing 2011 (24) S.T.R. 1135 (S.C.) and order passed by the Tribunal in case of M/s. Prasad Diesel and Equipments Trading Enterprise versus CCE Salem reported at 2011-TOL-112-133(TAT-940), wherein it is held that statutory services does not attract service tax. Thus, the work of Weighment Service carried out by the appellant is a statutory requirement and therefore such activity involving statutory requirements is not covered under service tax under the category of "Business Auxiliary Services".

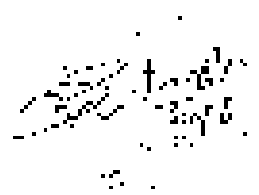
2.4 From the foregoing discussions, it is clear that the Intergovernment services carried out by the appellant is not covered under Service tax under the category of "Business Auxiliary Services" as defined under Section 65(1)(O) of the Finance Act, 1994 read with Section 65(25) of the Finance Act, 1994, therefore, I hold that impugned order passed by the lower adjudicating authority is liable to be set aside.

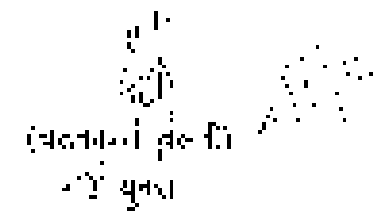
2.5 Once, demand of Service Tax is not tenable, as held above, the position of appellant is covered under Section 71 of the Finance Act, 1994 and provisions amended under Sections 76(1), 76(2) and 76(3) of the Finance Act, 1994 are also applicable.

2.6 In view of the discussion held, I set aside the impugned order passed by the lower adjudicating authority and allow the appeal filed by the appellant.

2.7 अतिरिक्त दृष्टांतों के संदर्भ में उक्त आदेश को अपेक्षित तरीके से रद्द किया जाता है।

2.8 The appeal filed by the appellant stands disposed off in above terms.





By Capt. P. L. G. I.

To

Mrs. Anwar Jahan Begum
Registered Office at
10, E. Avenue Chambers,
Casal Road,
Dhaka.

১০ এ. এভিনিউ চেম্বার্স
কাসল রোড - ১০, ঢাকা
আনবার জাহান বেগম
কাসল

Copy to -

1. The Joint Commissioner, GST & Central Excise, Administrative Zone, Dhaka.
 2. The Commissioner, GST & Central Excise, Rajshahi Commissionerate, Rajshahi.
 3. The Additional Commissioner, GST & Central Excise, Rajshahi Commissionerate, Rajshahi.
 4. The Deputy Commissioner, GST & Central Excise, Dhaka, Mot.
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