



::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 / 2<sup>nd</sup> Floor, GST Bhavan,

रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

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रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No. V2/248 /RAJ/2017	मूल आदेश सं / O.I.O. No. 46/ADC/RKC/2016-17	दिनांक / Date 21.03.2017
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ख अपील आदेश संख्या (Order-In-Appeal No.):

**RAJ-EXCUS-000-APP-117-2018-19**

आदेश का दिनांक / Date of Order:	31.05.2018	जारी करने की तारीख / Date of issue:	06.06.2018
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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 धारा ८५, केन्द्रीय 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 17.10.2017 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 :-  
1. M/s. Gayatri Weightbridge, At : Navlaxhi Port, Navlaxhi.

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/  
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

- (A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है।/  
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-
- (i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए।/  
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.
- (ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- ३८००१६ को की जानी चाहिए।/  
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above



- (iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

- (B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a 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 नियमावली, 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 प्रतियों 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" में निम्न शामिल है

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

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

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,

Under Central Excise and Service Tax, "Duty Demanded" shall include :

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

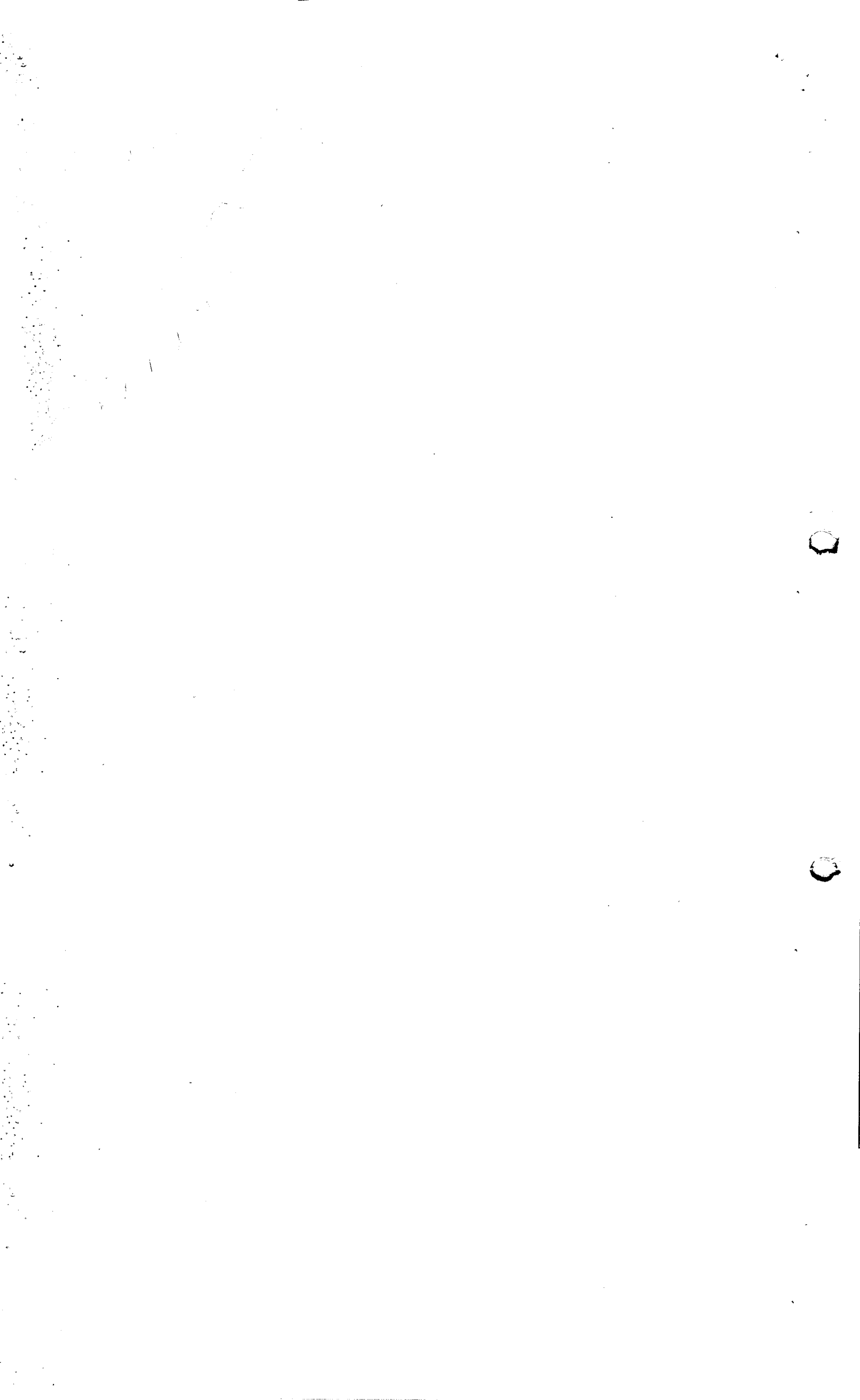
(C) भारत सरकार को पुनरीक्षण आवेदन :

**Revision application to Government of India:**

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केंद्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना है।

A revision application lies to the Under Secretary, to the Government of India, Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Revision Building, Parliament Street, New Delhi-110001, under Section 35EE of the Finance Act, 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section 35EE of the Finance Act, 1944.

- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के किसी के मामले में।  
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse to another factory or from one warehouse to another during the course of processing of 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 भारी गैर-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 an excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है।  
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए हैं।  
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय 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।  
जहां संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।  
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण 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, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.
- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
- (G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbec.gov.in](http://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](http://www.cbec.gov.in)



**:: ORDER IN APPEAL ::**

M/s. Gayatri Weighbridge, At Navlakhi Port, Navlakhi having their weigh bridge at Navlakhi Port (hereinafter referred to as "the appellant") has filed the present appeal against Order No. 46/ADC/RKC/2016-17 dated 21-03-2017 (hereinafter referred to as "the impugned order") passed by the Additional Commissioner, Central Excise & Service Tax Commissionerate, Rajkot (hereinafter referred to as "the lower adjudicating authority").

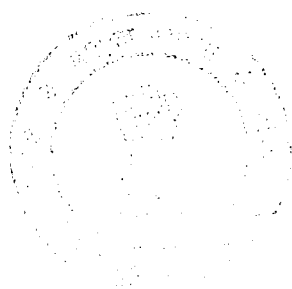
2. Briefly stated the facts of the case are that the appellant having their Weigh Bridge at Navlakhi Port. During the course of search operation carried out by the team of officers of Preventive Section, Central Excise & Service Tax, Rajkot, various documents / records were resumed under Panchanama dated 12/13-07-2016. 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. V.ST/ST-AR-MRB/Div-Morbi/ADC(PV)/84/2016-17 dated 20-10-2016 to the appellant by the Department for non payment / short payment of Service Tax to the tune of Rs. 53,20,626/-, 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. 53,20,626/- alongwith interest and also imposed penalties under Section 70, 77(1), 77(2) and 78(1) of the Finance Act, 1994.

4. Being aggrieved, appellant has preferred the present appeal and contended that they are having a weighbridge within the 'port area' of Navlakhi Port, having weighing capacity of 100 Tons; that they have been doing the work of Weighment of imported cargo, mainly coal, within the port area; that Gujarat Maritime Board (i.e. GMB) is the Custodian of the Navlakhi Port appointed under Section 45 of the Customs Act, 1962; that having weighbridge within the port area, is one of the prime requirement of Gujarat Maritime Board under Handling of Cargo in Customs Area Regulations, 2009; that the Gujarat Maritime Board has given land on lease basis to them for set up and operation of weighbridge in the port area; that they submit the copy of Memorandum/lease agreement dated 09-07-2013; that GMB has renewed their lease period for 10 years i.e. from 10.10.2011 to 31.12.2020; that as per the condition of lease agreement, they could not utilize the said plot for any other purpose except operation of weighbridge; that the said

condition itself clarify that the said weighbridge has been set to fulfill the statutory requirement as per Handling of Cargo in Customs Area Regulations, 2009; that at Navlakhi Port, different importers import coal and stevedores viz. United Shippers Limited, Shriji Shipping are handling / clearing the cargo from the port area; that either the importer or the stevedore hires 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 activity of the cargo; that in order to determine the actual weight of loaded cargo, the truck drivers used to bring the empty trucks i.e. 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 weighment purpose; they receive consideration for Weighment of cargo from the truck drivers only; that the Adjudicating authority held that the service provided by them falls under the category of "Business Support Service" as defined under Section 65 (104c) and taxable under Section 65 (105) (zzzq); that the Adjudicating Authority also observed that after the introduction of negative list w.e.f. 01.07.2012, their Service has been defined under 65B (44) of the Finance Act, 1994 and the service provided by them is neither specified in the negative list nor the same are exempted under Notification No. 25/2012-ST dated 20.06.2012 w.e.f. 01.07.2012; that the activity of weighment in the 'port area' is not a 'Business Support Service'; that the adjudicating authority failed to explain that as to how their activity falls under the category of "Business Support Service"; that the weighment activity, carried out by them does not fall within the definition/category of "Business Support Service" as defined under Section 65 (105) (zzzq) and as per Section 65(104c) of the Finance Act 'Support service of business and commerce'; that as per para 2.5 of the Circular No. 109/3/2009-S.T. dated 23-02-2009, 'Business Support Service' is a generic service of providing 'support to the business or commerce of the service receiver'; that in other words the principal activity is to be undertaken by the client while assistance or support is provided by the taxable service provider; that the said aspect has also not fulfilled in their case; that they are having their weighbridge and undertaken the Weighment of cargo and not carried out any activity, which has been initiated 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 of Navlakhi; that in most of the cases the weighment bills were raised to the truck drivers and the truck drivers had paid the charge of Weighment; that they enclosed sample copy of such bills; that it is clear that the activity carried out by them is not a service

provided to support any business activity to any business entity; that the facilities i.e. weigh bridge, office premises etc., owned by them and placed within the port area as per the permission / lease agreement made by the Port Authority and Custodian i.e. Gujarat Maritime 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; that Weighment services provided by them are not given to support business of any person; that therefore, the Service Tax demand in respect of their alleged activities as 'Business Support Service' is not sustainable; that the Order-in-Original does not discuss at all as to how their activities is covered by 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 Service'; 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 Service' under section 65 (82) of the Finance Act, 1994; that it has been clarified in para 2.5 of the Circular No. 109/3/2009-S.T. 23.02.2009, that in Business support service, 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 Bhopal, reported at 2014 (34) STR 373 (Tr.-Del); that in their case, their activity is not in supporting nature; that the activity of Weighment is an independent activity of Weighment of imported cargo as per the requirement of different vehicle's drivers; that neither the weighing machine nor any accessory or the premises, where billing work has been done, were given to any other person (either individual or any firm) in any manner in order to support their business activity; that their activity of Weighment of imported cargo in the port area is not taxable service; that Weighment work within the port area is not a service but a facility provided by the Gujarat Maritime Board under Handling of Cargo in Customs Areas Regulation, 2009; that weighbridge 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 weighbridge 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 GMB to manage the port area for storing the cargo in the port area as well also for the importer or the stevedores to confirm the quantity of cargo dispatched or transported; that the activity carried out by 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 case laws (i) M/s Harshita Handling versus Commissioner of C.Ex., Bhopal, reported in 2010 (19) STR 596 (Tn.- Del) (ii) M/s New Era Handling Agency versus Commissioner of C.Ex. Panji, Goa reported in 2016 (44) STR J278 (S.C.); that the adjudicating authority held that the said case laws were not applicable as the fact and circumstances in the present case are different; that the adjudicating authority failed to understand that the GMB is a government authority and GMB has given licence / permission to them for weighbridge as the same is one of the conditions for custodian as per Handling of Cargo in Customs Areas Regulation, 2009; that the requirement of having weighbridge in the port is a statutory requirement and hence not taxable; that extended period can not 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 Gujarat Maritime Board and the GMB has been under statutory obligation to provide the weighing facility as per the 'Handling of Cargo in Customs Areas Regulation, 2009'; that they were under belief that the activity is a statutory requirement and hence, not taxable; that the department has earlier booked case against different assesses and demanded Service Tax on Weighment activity under 'Business Auxiliary Service'; that the department's stand was dropped by the Tribunal and decided that the activity was not taxable; that they rely on the case laws (i) Commr. Of C.Ex., Jalandhar versus Bhawani Shankar Casting P. Ltd., reported in 2008 (10) S.T.R. 213 (Tn. Del) (ii) Commissioner of C.Ex., Chandigarh versus Deepak Computers, reported in 2008 (12) S.T.R. 569 (Tn.- Del) (iii) Commissioner of C.Ex. Chandigarh versus Northern Computer, reported in 2009 (13) S.T.R. 34 (Tn.- Del) (iv) Commissioner of C.Ex. Chandigarh versus Banke Bihari Computers, reported in 2008 (12) S.T.R. 724 ( Tn.- Del); that there has not been any mala fide intention to evade from payment of Service Tax and therefore extended period can not be invoked; that nothing suppressed by them which was required to be disclosed 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 invoked; that they rely on the case laws (i) Usha Udyog versus Commissioner of C.Ex., Kanpur, reported in 2001 (136) E.L.T. 1031 (Tn.- Del), which was maintained in the Honble Supreme Court and reported in 2002 (144) E.L.T. A298 ( S.C.) (ii) Commissioner of C.Ex., Ludhiana versus Asian Cranes & Engg. Service, reported in 2010 (18) S.T.R. 60 (Tn.- Del) (iii) Duraiappa Lime Products versus Commissioner of C. Ex., Madurai, reported in 1998 (104) E.L.T. 505 ( Tribunal); that beyond the normal period, the demand is time barred; that the period involved in the Show Cause Notice 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 or issuance of Show



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Cause Notice has been extended from one year to eighteen month with effect from 28.05.2012 and the same has been extended to thirty month with effect from 14.05.2016; that period involved is from 2011-12 to March, 2016 and therefore beyond one year till May 2012 and then after beyond 18 months the demand is time barred; that the Show Cause Notice is given on 20.10.2016, the period prior to 19.04.2015 is time barred; that demand of Service Tax of Rs. 30,82,874/- is beyond the time of limitation and can not be demanded; that after deducting the demand, prior to normal period of 18 months, it comes to Rs. 22,37,752/- only and the demand of Service Tax of Rs. 30,82,874/- is barred by the limitation of time and can not be demanded; that as their activity is not a 'Business Support Service' and being a statutory requirement, the same is not taxable service, therefore there is no liability of Service Tax on them and therefore, the penalty under Section 76, 77(1), 77(2) and 78 of finance Act, 1994 as imposed vide the OIO 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 being provided within the 'port area' and has been one of the statutory requirement under Handling of Cargo in Customs Areas Regulation, 2009; that the Appellant was under reasonable belief that the said activity is not taxable service on the basis of case laws of (i) Commr. Of C. Ex., Jalandhar versus Bhawani Shankar Casting P. Ltd., reported in 2008 (10) S.T.R. 213 (Tn. Del), (ii) Commissioner of C.Ex., Chandigarh versus Deepak Computers, reported in 2008 (12) S.T.R. 569 ( Tn.- Del) (iii) Commissioner of C.Ex. Chandigarh versus Northern Computer, reported in 2009 (13) S.T.R. 34 (Tn.- Del) (iv) Commissioner of C.Ex. Chandigarh versus Banke Bihari Computers, reported in 2008 (12) S.T.R. 724 (Tn.- Del); that in all the said case laws it was decided that the activity of Weighment is not 'Business Auxiliary Service' and therefore the Appellant has strong reasonable belief that the activity of Weighment is not a service; that there was not any mala fide intention to evade from payment of service tax and they have not suppressed any material fact which was required to be disclosed before the department; that the ingredient for imposing penalty under section 78 of the Finance Act, 1994 is absent 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 imposable upon them; that they rely upon the case laws viz. (i) Commissioner of Central Excise versus Dalma Energy LLC, reported in 2014 (36) STR 23 (Guj.), (ii) Blossom Industries Limited versus Commissioner of Central Excise., Customs and Service Tax, Daman, reported in 2016 (41) STR 872 ( Tn.- Ahmd.) (iii) Bony Auto Links versus Commissioner of Central Excise, Rajkot, reported in 2014 (36) STR 113 (Tn.- Ahmd)

(iv) Kalsis Kichenette versus Commissioner of Central Excise, Pune-III, reported in 2010 (20) STR 772 (Tn.- Mumbai); that on the same plea, penalties under section 70, 76, 77(1) and 77(2) of the Finance Act, 1994 are not imposable on them; that they were under 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 ETA Engineering Limited versus CCE, Chennai, reported in 2004 (174) ELT 19 (Tn.- LB).

5. Personal hearing in the matter was fixed on 22-03-2018, which was attended by Shri Moiz M. Dhangot, Chartered Accountant, who reiterated grounds of appeal and submitted written submission containing the plea already contained in the grounds of appeals and he further requested to allow their appeal.

6. I have carefully gone through the facts of the case, impugned order, appeal memorandum and the submissions made by the appellant. The limited issue to be decided in the present appeal is whether the impugned order passed by the Lower Adjudicating Authority, wherein the Demand of Rs. 53,20,626/- confirmed alongwith interest and penalties imposed under Sections 70, 77(1), 77(2) and 78(1) of the Finance Act, 1994, is, correct or otherwise.

7.1 It is noticed that during the course of inquiry, it was concluded that the Weighment service carried out by the appellant having weighbridge under the Port Area of Navlakh port is classifiable under the taxable category of 'Business Support Service' as defined under Section 65 (104c) of the Finance Act, 1994 readwith Section 65(105)(zzzg) of the Finance Act, 1994.

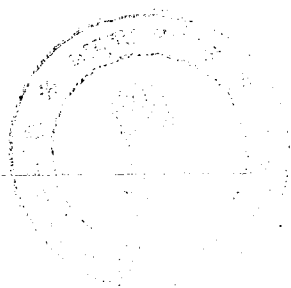
7.2 It is contended by the appellant that merely Weighment of Cargo service would not amount to support services of business or commerce and therefore they are not liable to pay service tax under this category. To appreciate the issue better, I reproduce the definition of "Support Services of Business or Commerce" as defined under Section 65 (104c) of the Finance Act, 1994.

7.3 To ascertain as to whether the Weighment service covered under the taxable category of 'Business Support Service' or otherwise, I have gone through the definition of 'Business Support Service' as defined under Section 65 (104c) of the Finance Act, 1994 readwith Section 65(105)(zzzg) of the Finance Act, 1994, which is reproduced as under :-

*[(104c) "support services of business or commerce" means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfillment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, infrastructure support services and other transaction processing.*

*Explanation.—For the purposes of this clause, the expression "infrastructural support services" includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security;]*

7.4 Further, as per Section 65(105)(zzzq) of the Finance Act, 1994, "taxable service" means 'any service provided or to be provided to any person, by 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 specific services by wording 'and includes ....', which specify the some of other services also. Now, the Weighment service provided by the appellant is required to be analyzed in view of above definition. On perusal of aforesaid legal definition, it can be seen that the nature of services which are proposed to be covered under the net 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. I find force in the argument putforth by the appellant that they have provided Weighment Service to the truck drivers. I find that in order to determine the actual weight of loaded cargo, the truck drivers used to bring the empty trucks i.e. before loading of the cargo to the weighbridge of the Appellant and get the weight of the empty truck and after loading of coal from port area, again the same truck drivers bring the loaded truck to the weighbridge of the Appellant for Weighment purpose for which, the appellant received cash consideration for Weighment of cargo. I also 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 is required 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 Weighment services to various truck drivers, which is not any support or assistance to their business activity. The activity of Weighment carried out by the Appellant is an independent activity, which is requirement of different vehicle's drivers to ascertain as to how



much quantity loaded in their Trucks. Further, it is evident that the appellant has carried out all the activities within the port limit of Navlakhi. It is also evident on record that the appellant has provided Weighment services for imported cargo unloading from the Navlakhi port. Thus, the principal activity carried out by the Appellant is Weighment Service, and they have no concerned with the sale or marketing of goods. Further, the appellant has not provided any assistance or support to their Customers viz. Truck Drivers. Thus, I hold that the Weighment services carried out by the Appellant is not covered under the 'Business Support Service' as defined under Section 65 (104c) of the Finance Act, 1994 readwith Section 65(105)(zzzg) of the Finance Act, 1994.

7.5 My above view also bolstered by the following case citations issued by the Tribunals, wherein it is held by the Tribunal that managing of weighbridge and issuing Weighment slips is not covered under the taxable category of "Business Auxiliary Services".

- (i) Commissioner of Central Excise, Jalandhar versus Bhawani Shankar Casting P. Ltd., reported at 2008 (10) S.T.R. 213
- (ii) Commissioner of Central Excise, Chandigarh versus Deepak Computers, reported at 2008 (12) S.T.R. 569
- (iii) Commissioner of Central Excise, Chandigarh versus Northern Computer, reported at 2009 (13) S.T.R. 34
- (iv) Commissioner of Central Excise, Chandigarh versus Banke Bihari Computers, reported at 2008 (12) S.T.R. 724

7.6 In view of above, I am of the considered opinion that the Weighment services carried out by the Appellant 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 (104c) of the Finance Act, 1994 readwith Section 65(105)(zzzg) of the Finance Act, 1994.

7.7 Further, I also find that appellant 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 appellant have carried out the work of Weighment Services on the weighbridge installed within the Port area of Navlakhi port. The Gujarat Maritime Board (i.e. GMB) is appointed as the Custodian of the Navlakhi Port under Section 45 of the Customs Act, 1962. The Board has given land to the Appellant on lease basis to set up and operation of

weighbridge in the port area of Navlakhi. The appellant has contended that having weighbridge within the port area is prime requirement as prescribed under Handling of Cargo in Customs Area Regulations, 2009 notified vide Notification No. 26/2009-Customs (NT) dated 17.3.2009. To ascertain as to whether the Weighment service is statutory requirement or otherwise, I have gone through the Handling of Cargo in Customs Areas Regulations, 2009, wherein under Rule 5, various conditions prescribed by the Government, which reads as under :-

“5. Conditions to be fulfilled by an applicant for custody and handling of imported or export goods in a customs area. - Any person who intends to be approved as a Customs Cargo 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 :-

- (1) The applicant shall provide the following to the satisfaction of the Commissioner of Customs namely :
  - (i) Infrastructure, equipment and adequate manpower for loading, unloading, stacking, handling stuffing and de-stuffing of containers, storage, dispatch and delivery of containers and cargo etc., including :
    - (a) standard pavement for heavy duty equipment for use in the operational and stacking area;
    - (b) building for Customs office, Customs Electronic Data Interchange (EDI) Service Centre and user agencies with basic amenities and facilities;
    - (c) storage facility, separately for imported, export and transshipment goods;
    - (d) gate complex with separate entry and exit;
    - (e) adequate parking space for vehicles;
    - (f) boundary wall;
    - (g) internal service roads;
    - (h) electronic weigh-bridge and other weighing and measuring devices;
    - (i) computerized system for location and accountal of goods, and processing of documents;
    - (j) adequate air-conditioned space and power back up, hardware, 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 e-auction, for disposal of uncleared, unclaimed or abandoned cargo;
    - (l) facilities for installation of scanning equipment;
    - (m) security and access control to prohibit unauthorized access into the premises, 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;
    - (ii) safe, secure and spacious premises for loading, unloading, handling and storing of the cargo for the projected capacity and for the examination and other operations as may be required in compliance with any law for the time being in force;
    - (iii) insurance for an amount equal to the average value of

goods likely to be stored in the customs area based on the projected capacity, and for an amount as the Commissioner of Customs may specify having regard to the goods which have already been insured by the importers or exporters.”

7.8 On going through the above said mandatory conditions prescribed under Handling of Cargo in Customs Areas Regulations, 2009, I find that at condition number (h), it is mentioned as ‘electronic weigh-bridge and other weighing and measuring devices’. Thus, I hold that having an electronic weigh bridge in the Port Area is statutory requirement as prescribed under Handling of Cargo in Customs Area Regulations, 2009, notified vide Notification No. 26/2009-Customs (NT) dated 17.3.2009. Further, I also noticed that Weighment Service provided by the appellant is not for all but, restricted to the cargo available in the Port Area of Navlakhi. It is nowhere alleged by the Department that the Appellant had provided Weighment services to any vehicles having other than local cargo. Thus, the appellant has specifically 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 at specific plots available and allocated at Navalkhi port by Gujarat Maritime Board as well as Customs. Thus, it is prime requirement of Gujarat Maritime Board as well as Customs to monitor the movement of the cargo. The bulk cargo in coal if not process through the procedure of Weighment, it would not possible either for Customs Department or Gujarat Maritime Board to ascertain as to how much imported cargo has been dispatched and sent out of port and how much imported cargo i.e. Coal is presently 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 ascertain as to how much quantity of cargo has been dispatched from the total quantity of out of charge given by the Customs, under Section 47 of the Customs Act, 1962 and how much quantity of the Cargo is remaining at plot available within the port area. Further, it is also noticed that the Navlakhi port area is covered under the Customs Area, for which GMB is appointed as Custodian. Further, as per section 141 of the Customs Act, 1962, the conveyances and goods in a customs area should be under control of officer of Customs and therefore all the conveyances within the port area is 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, 1962, Customs as well as Gujarat Maritime Board has also installed Check Post thorough which only vehicle and trucks can enter in the Navlakhi Port and exit from the Navlakhi port. At the said check post, the officers on duty mandatorily check the cargo vehicle to

ascertain as to how much cargo is being dispatched by the cargo vehicle from the Navlakhi Port. Such Officers ascertain the Weighment of cargo on the basis of Weighment slip issued by the appellant. Without Weighment slip, the officers on duty at check post would not allow any cargo vehicles loaded with the cargo for exit from the Navlkhi port. All the truck drivers have to deposit the gate pass in which the quantity of the cargo as mentioned in the Weighment slip has to be declared and such gate pass has to be deposited at the gate of Check post and without such gate pass, the officers on duty would not grant exit entry to any cargo vehicles. Further, it is also noticed that the Customs Officers used to give out of Customs Charge of the bulk cargo i.e. Coal lying within the port area under Section 47 of the Customs Act, 1962. To monitor the quantity of the out of customs charge given by the Customs Officers under Section 47 of the Customs Act, 1962, Weighment slip is only the documentary evidences from which they can ascertain the exact quantity of dispatch from the Navlakhi port and remaining quantity available on port. Thus, the Weighment of Cargo is not only mandatory requirement under Handling of Cargo in Customs Areas Regulations, 2009 but also mandatory requirement for Customs as well Gujarat Maritime Board to ascertain how much imported quantity of cargo has been dispatched from the port area and how much imported quantity of cargo has been available within the port area.

7.9 Further, I also rely upon the judicial pronouncements of Hon'ble Supreme Court of India passed in the case of Commissioner v/s. Harshita Handling - 2011 (24) S.T.R. J135 (S.C.) and order passed by the Tribunal in case of M/s. Pressure Vessels and Equipments Testing Enterprise versus CCE Salem reported at 2013-TIOL-142-CESTAT-MAD, wherein it is held that statutory services does not attract service tax. Thus, the work of Weighment Service carried out by the appellant is statutory requirement and therefore such activity involving statutory requirement is not covered under service tax under the category of "Business Auxiliary Services".

8. From the forgoing discussions, it is clear that the Weighment services carried out by the appellant is not covered under Service tax under the category of 'Business Support Service' as defined under Section 65 (104c) of the Finance Act, 1994 readwith Section 65(105)(zzzg) of the Finance Act, 1994, therefore, I hold that impugned order passed by the lower adjudicating authority is liable to be set aside.

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8.1 Once, demand of Service Tax is not tenable, as held above, the question of recovery of interest under Section 75 of the Finance Act, 1994 and penalties imposed under Sections 70, 77(1), 77(2) and 78(1) of the Finance Act, 1994 is also not survived.

9. 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.

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

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

*[Handwritten Signature]*  
 (अधीक्षक)  
 राजकोट (अधीक्षक)

*[Handwritten Signature]*  
 (चंद्रकान्त वलवी)  
 आयुक्त

By Regd. Post AD

To

M/s. Gayatri Weighbridge, At Navlakhi Port, Navlakhi	मेसर्स गायत्री वेब्रीज, नवलखी पोर्ट, नवलखी
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Copy to: -

1. The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot.
3. The Additional Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot
4. The Deputy Commissioner, GST & Central Excise Division, Morbi.
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