



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

द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan
रेस कोर्स रिंग रोड / Race Course Ring Road

राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952/2441142 Email: commrappl3-cexamd@nic.in



सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा

DIN-20211264SX000000AEC6

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/22/BVR/2021	DC/JND/01/2021-22	20.04.2021

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

BHV-EXCUS-000-APP-008-2021

आदेश का दिनांक / Date of Order:	30.11.2021	जारी करने की तारीख / Date of issue:	02.12.2021
------------------------------------	------------	--	------------

श्री अखिलेश कुमार, आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by Shri Akhilesh Kumar, Commissioner (Appeals), Rajkot.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/ Joint/ Deputy/ Assistant Commissioner, Central Excise/ ST / GST, Rajkot / Jamnagar / Gandhidham:

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

M/s. State Charges-Government of Gujarat, Port Office PORBANDAR, C/o. Gujarat Maritime Board Nr. S.T. Bus Stand Ajanta Commercial Center, Ashram Road, Ahmedabad-380014

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) सामां शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थी न्यायाधिकरण के प्रांत अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 का 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 उत्पाद शुल्क एवं सेवाकर अपीलार्थी 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 अपीलार्थी न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन अमरावा अहमदाबाद- 380016 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) अपीलार्थी न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवाली, 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 अपीलार्थी न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार 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 अपीलार्थी न्यायाधिकरण की शाखा स्थित है। स्वयं आदेश (स्ट ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये 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. 5,000/-, 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) अपीलार्थी न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती 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 अपीलार्थी न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार 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 अपीलार्थी न्यायाधिकरण की शाखा स्थित है। स्वयं आदेश (स्ट ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये का निर्धारित शुल्क जमा करना होगा। /

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs. 5,000/- 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 सकती एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise / Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये 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 गयी 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 स्थान 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 पुनरीक्षणवाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपूरतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, मंसद 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 क्यूटी 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 समायांविधि 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 संशोधन 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 केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner, 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 filed 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 टिकट 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 बर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in.



:: ORDER-IN-APPEAL ::

M/s State Charges GOG (Gujarat Maritime Board), Porbandar (hereinafter referred to as 'appellant') has filed Appeal No. V2/22/BVR/2021 against Order-in-Original No. DC/JND/1/2021-22 dated 20.4.2021 (hereinafter referred to as 'impugned order') issued by the Deputy Commissioner, Central GST Division Junagadh, Bhavnagar Commissionerate (hereinafter referred to as 'adjudicating authority').

2. The facts of case, in brief, are that the Appellant was registered with Service Tax Department having Registration No. GOVTS5192XSD001 under the category of 'Port Service'. During the course of audit of the records of the Appellant undertaken by the Departmental officers, it was observed that the Appellant had booked income under the Head 'License Fee' for stevedoring, Harbour Craft, Ship Chandler, Ship repair etc. during the period from F.Y. 2013-14 to January, 2017. It appeared that the said income was covered within the term 'service' defined under Section 65B(44) of the Finance Act, 1994 (hereinafter referred to as 'Act') and was not covered under negative list of services under Section 66D of the Act. However, the Appellant had not paid service tax on the said income.

3. Based on audit observation, Show Cause Notice No. VI(a)/8-83/EA-2000/Circle-V/2017-18/Gr.22 dated 16.1.2020 was issued to the Appellant calling them to show cause as to why service tax amounting to Rs. 1,31,996/- should not be demanded and recovered from them under Section 73(1) of the Act along with interest under Section 75 of the Act and proposed imposition of penalty under Sections 76, 77 and 78 of the Act.

3.1 The above Show Cause Notice was adjudicated by the adjudicating authority vide the impugned order wherein he granted benefit of cum-tax and re-determined service tax demand at Rs. 84,354/-, which was confirmed under Section 73(1) of the Act, along with interest under Section 75 of the Act and imposed penalty of Rs. 84,354/- under Section 78 of the Act.

4. Being aggrieved, the appellant preferred the present appeal on the following grounds:

- (i) The adjudicating authority has overlooked the submission made by them and mechanically confirmed the service tax demand. The adjudicating authority overlooked that the appellant is a Government authority and the activities carried out by the appellant are exempted from payment of service tax; that the impugned order has relied on the definition of port service to



confirm the demand which is not relevant in the period of dispute; that the impugned order is a non-speaking order and relied upon decisions in the case of Cyril Lasardo (Dead) reported as 2004 (7) SCC 431 and Shukla & Brothers reported as 2010 (254) ELT 6 (SC).

(ii) That Article 246 of the Constitution of India prescribes subject matter of laws made by Parliament and by the legislatures of states, the Appellant is an authority under Entry 31, List III of Seventh Schedule to the Constitution of India for administration of ports other than major ports in the State of Gujarat. The Appellant has been constituted by the Government of Gujarat under the Gujarat Maritime Board Act, 1981 and is a statutory authority for administration of minor ports in the State of Gujarat. The Appellant is empowered to levy state charges under Section 22A of the Gujarat Maritime Board Act, 1981 and derives power to levy charges for handling and shipping, license fees, waterfront royalty etc. As per sub Section (2) of Section 22A, the above charges are to be credited to the consolidated fund of the State of Gujarat. They had charged license fee as per the constitutional powers conferred upon them and the same cannot be equated with the consideration for the services rendered. They had charged License Fees in lieu of sovereign function discharged by them and hence, the same is not taxable and relied upon Board's Circular No. 89/07/2006 dated 18.12.2006, Master Circular dated 23.08.2007 issued by CBEC; FAQ 2008 dated 04.12.2008 and FAQ 2010 dated 01.09.2010 issued by DGST, CBIC, Government of India and following case laws:

- (a) CMC Limited - 2007 (7) STR 702 (Tri.-Bang)
- (b) Electrical Inspectorate, Govt of Karnataka - 2008 (9) STR 494 (Tri.-Bang)
- (c) CS Software Enterprise Ltd. - 2008 (10) STR 367 (Tri.-Bang)
- (d) Maharashtra Industrial Development Corporation reported as 2014-TIOL-2022-CESTAT-MUM.

(iii) That as per Article 246(3), the legislature of any state has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule to the Constitution of India. The Gujarat Maritime Board Act, 1981 has been framed and enacted by the State Government of Gujarat under Entry 31, List II to the Seventh Schedule to the Constitution of India. Therefore, only the Government of Gujarat has power to levy such charges and the Central Government cannot make any law to levy tax on the statutory charges collected by the State Government.

(vi) That for imposing penalty under Section 78 of the Act, there should be an intention to evade payment of service tax, or there should be suppression or



concealment of material facts. They had provided all the details as and when desired by the Department vide the letters to the Department and at no point of time they had the intention to evade service tax or suppressed any fact wilfully from the knowledge of the Department. That they are State Government of Gujarat. The essential ingredients for imposition of penalty under Section 78 of Finance Act, 1994 is that there should be intention to evade payment of service tax. Since they are government, there cannot be any malafide intention on the part of the government to evade payment of tax. For this reason also penalty under Section 78 is not imposable and relied upon following case laws:

- (a) Suvikram Plastex Pvt. Ltd. -2008 (225) ELT 282 (T)
- (b) Rallis India Ltd. - 2006 (201) ELT 429 (T)
- (c) Patton Ltd. - 2006 (206) ELT 496 (T)
- (d) Satguru Engineering & Consultants Pvt. Ltd.- 2006 (203) ELT 492 (T)
- (e) Indian Hume Pipes Co. Ltd. - 2004 (163) ELT 273 (T)

5. Hearing in the matter was scheduled in virtual mode through video conferencing on 15.11.2021. Shri H.D. Virk, C.A., appeared on behalf of the Appellant. He reiterated the submissions made in appeal memorandum.

6. I have carefully gone through the facts of the case, the impugned order and submissions made by the appellant in the Appeal Memorandum and at the time of personal hearing. The issue to be decided in the present case is whether the Appellant is liable to pay service tax on the income booked under the Head 'License Fee' or not.

6. On perusal of records, I find that the Appellant collected 'License Fee' for stevedoring, Harbour Craft, Ship Chandler, Ship repair etc. during the period from F.Y. 2013-14 to January, 2017 and credited the same to the Consolidated Fund of the Government of Gujarat. The adjudicating authority confirmed service tax demand on the said license fee on the grounds that the same was covered within the term 'service' defined under Section 65B(44) of the Act and was not covered under negative list of services under Section 66D of the Act.

6.1 The Appellant has contended that they are empowered to levy state charges under Section 22A of the Gujarat Maritime Board Act, 1981 and derives power to levy charges for handling and shipping, license fees, waterfront royalty etc. As per sub Section (2) of Section 22A, the above charges are to be credited to the Consolidated Fund of the State of Gujarat. They had charged license fee as per the constitutional powers conferred upon them and the same cannot be equated with the consideration for the services rendered. They had charged License Fees in lieu of sovereign function discharged by them and hence, the same is not taxable and relied upon Board's



Handwritten signature

Circular No. 89/07/2006 dated 18.12.2006, Master Circular dated 23.08.2007 issued by CBEC; FAQ 2008 dated 04.12.2008 and FAQ 2010 dated 01.09.2010 issued by DGST, CBIC.

7. I find that the Government of Gujarat has enacted the Gujarat Maritime Board Act, 1981 and powers of administration, control and management of minor ports and for matters connected therewith were conferred to Gujarat Maritime Board. The appellant derives power to levy charges for landing and shipping, license fees, waterfront and lighterage charges under Section 22A of the Gujarat Maritime Board Act, 1981, inserted w.e.f. 1.4.2008, which reads as under:

“22A.(1) The State Government shall levy,
 (i) Charges for landing and shipping, licence fees, waterfront and lighterage charges at minor ports which are under administration, control and management of the Board; and
 (ii) Waterfront royalty as applicable at minor ports in the State of Gujarat, at such rates as the State Government may, by notification in the Official Gazette, specify.

(2) The State charges referred to in sub-section (1) shall be collected, in the manner as may be prescribed, by the Board or by an officer as may be authorized by the Board or the State Government and all such moneys shall be credited to the Consolidated Fund of the State.”

(Emphasis supplied)

7.1 From the above statutory provisions, it is clear that the appellant is empowered by Gujarat State legislature to collect license fee on behalf of the Government of Gujarat. Further, it is also on record that license fee so collected by the appellant was credited to the Consolidated Fund of the State of Gujarat. Therefore, I am of the considered view that the said fees levied by the appellant has to be considered as statutory levy and the same do not attract service tax. I rely on the Order passed by the Hon'ble CESTAT, Ahmedabad in appellant's own case reported as 2015 (38) STR 776 (Tri.-Ahmd.), wherein the Hon'ble Tribunal has held that any amount collected, after 01.04.2008, by Gujarat Maritime Board, has to be considered as statutory levy only and service tax liability thereon may not arise, if collected as per Section 22A of the Gujarat Maritime Act, 1981. Relevant portion of the said Order is reproduced as under:

“4.4.1 Article 246 of the Constitution of India prescribes subject matter of laws made by Parliament and by the legislatures of States. Article 246(2) states as under:

“(2) Notwithstanding anything in clause (3), Parliament and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as “Concurrent List”).”

4.4.2 Accordingly, vide Entry No. 31 of List III of the Seventh Schedule the State Government is empowered to make laws for ports other than those declared by or under law made by Parliament or existing law to major ports.



4.4.3 The State Government of Gujarat has enacted Gujarat Maritime Board Act, 1981 in view of the power given to it by Entry No. 31 of List III of the Seventh Schedule to the Constitution of India. The appellants are a body constituted under the provisions of Gujarat Maritime Board Act, 1981 to administer minor ports within the State. The shipping and landing fees are collected by the appellants under the provisions of Gujarat Maritime Board Act, 1981.

4.4.4 Hon'ble Supreme Court in the case of appellants itself, reported at 2007 (14) SCC 704, the Hon'ble Supreme Court observed as under:

"7. As can be seen from the preamble of the 1981 Act, it is clear that the Board has been constituted, inter alia, for purposes of development and maintenance of minor ports. Under the said Act, the Maritime Board also renders services like stevedoring, transport of goods, storage, shipping etc. It is also in charge of upkeepment of jetties, wharfs, roads, lights etc. However, the main object of the said Act is development of minor ports in the State of Gujarat. The income, accruing to the Maritime Board, including reserves and surplus are also required to be deployed and credited to a separate fund to be utilized for development of minor ports within the State. In this connection, we quote Sections 73, 74 and 75 of the 1981 Act herein below which read as under....."

... ..
... ..

10. It is also to be mentioned that w.e.f. 1-4-2008, the Govt. of Gujarat has amended the Gujarat Maritime Board Act, 1981, wherein Section 22A has been inserted. The said Section 22A specifically states that any amount provided by Gujarat Maritime Board, the appellant herein, is a State levy and a statutory levy and proceeds of such levy are credited to the Consolidated Treasury Fund of State of Gujarat. If that be so, any amount collected after 1-4-2008 by Gujarat Maritime Board, can be considered as statutory levy only and Service Tax liability thereon may not arise."

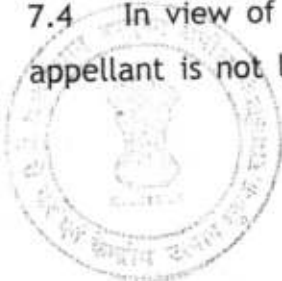
(Emphasis supplied)

7.2 The appeal filed by the department against the aforesaid decision has been dismissed by the Hon'ble Supreme Court reported as 2015 (39) STR 529 (SC) and hence the above Final Order of the Hon'ble CESTAT, Ahmedabad has attained finality in 2015.

7.3 I find that CBEC vide Circular No. 89/7/2006-ST dated 18.12.2006 has also clarified as under: -

2. The issue has been examined. The Board is of the view that the activities performed by the sovereign/public authorities under the provision of law are in the nature of statutory obligations which are to be fulfilled in accordance with law. The fee collected by them for performing such activities is in the nature of compulsory levy as per the provisions of the relevant statute, and it is deposited into the Government Treasury. Such activity is purely in public interest and it is undertaken as mandatory and statutory function. These are not in the nature of service to any particular individual for any consideration. Therefore, such an activity performed by a sovereign/public authority under the provisions of law does not constitute provision of taxable service to a person and, therefore, no service tax is leviable on such activities.

7.4 In view of above facts and legal position, I am of considered view that the appellant is not liable to pay service tax on License Fee charged and collected by



them under the Gujarat Maritime Board Act, 1981 while performing sovereign functions of the State and this fee cannot be treated as consideration for payment of service tax towards rendering of any service as the entire amount has been credited to the consolidated fund of the Government of Gujarat and has not been retained by the appellant. However, I find that Section 66D of the Act has been amended by the Finance Act, 2015 w.e.f. 1.4.2016 and exclusion clause (iv) has been inserted therein to provide that:

“Any service, other than services covered under clauses (i) to (iii) above, provided to business entities.”

7.5 In view of above, any service by Government or local authority has become taxable w.e.f. 1.4.2016, when provided to business entities. In the present case, the Appellant has admittedly collected ‘License Fee’ from business entities for providing stevedoring, Harbour Craft, Ship Chandler, Ship repair etc. Hence, the Appellant is required to discharge service tax on license fee for the period from 1.4.2016 to 31.1.2017, in view of amended provisions of Section 66D of the Act discussed supra. However, the Appellant is not liable to pay service tax for the period from F.Y. 2013-14 to March, 2016 as per findings given supra.

8. Regarding penalty imposed under Section 78 of the Act, the Appellant has contended that there should be an intention to evade payment of service tax, or there should be suppression or concealment of material facts. They had provided all the details as and when desired by the Department vide the letters to the Department and at no point of time they had the intention to evade service tax or suppressed any fact wilfully from the knowledge of the Department. That they are State Government of Gujarat. The essential ingredients for imposition of penalty under Section 78 of Finance Act, 1994 is that there should be intention to evade payment of service tax. Since they are government, there cannot be any malafide intention on the part of the government to evade payment of tax.

8.1 I find that in the present case, extended period of limitation under Section 73(1) of the Act has been invoked. Before examining whether penalty was correctly imposed under Section 78 or not, it would be pertinent to examine whether extended period of limitation under Section 73 of the Act was correctly invoked or not, since ingredients for invoking provisions of Section 73 and Section 78 are same and if extended period of limitation is correctly invoked then only penalty under Section 78 of the Act can be imposed. I find that extended period of limitation under Section 73 of the Act can be invoked when service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud or collusion or



wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax. The impugned order has failed to bring on record existence of any of the ingredients contained in Section 73(1) of the Act to invoke extended period of limitation. Further, the Appellant herein was constituted by the Government of Gujarat under the Gujarat Maritime Board Act, 1981 and being a Government entity, there cannot be any *mens rea* on the part of the Appellant to evade payment of service tax. Under the circumstances, extended period of limitation is not invocable in the present case. I rely on the Order passed by the Hon'ble CESTAT, New Delhi passed in the case of Rajasthan Housing Board reported as 2021 (52) G.S.T.L. 144 (Tri. - Del.), wherein it has been held that,

“26. Coming to the allegations of suppression of facts, we are of the opinion that there has to be a positive act of suppression apparent on part of the appellant along with an apparent intention to evade the payment of tax and there has to be a wilful misstatement as was held by Tribunal, Mumbai in the case of Centre for Development of Advance Computing v. CCE, Mumbai - 2016 (41) S.T.R. 208. The Adjudicating Authority below is observed to have failed to show any such positive act. Admittedly, the appellants were submitting their returns regularly. No question of suppression otherwise is possible. Department has failed to reflect any wilful misstatement. Appellant, admittedly, is an instrumentality of State Government. There cannot be an intent to evade the payment of tax. We rely upon the decision of Delhi Tribunal in the case of Centre for Entrepreneurship Development v. CCE, Bhopal - 2014 (34) S.T.R. 373 wherein it was held that when an Institute run by a State Government and associated in implementation of various welfare schemes of the Government, the allegations of suppression of facts or wilful misstatement can be nothing but absurd.”

27. In view of above discussion, the Department is not allowed to invoke the extended period of limitation and the adjudication imposing penalties upon the appellant is also held to be apparently wrong.”

(Emphasis supplied)

8.2 I also rely on the decision of the Hon'ble Chhattisgarh High Court rendered in the case of Chhattisgarh State Industrial Development Corpn. Ltd. reported as 2018 (17) G.S.T.L. 593 (Chhattisgarh), wherein the Hon'ble Court has held that,

“13. In the case at hand also, the CSIDC is an entity under the control of the Government of Chhattisgarh. It does not belong to an individual who would evade tax to corner profit in its business activity. The explanation put forth by the CSIDC that it was under bona fide impression that being an entity under the control of Government it was not liable to pay service tax appears to be reasonable explanation, therefore, mere non-registration under Section 65 or non-payment of service tax on the maintenance charges collected from industries would not amount to wilful suppression or misstatement of fact, hence, the CESTAT has rightly held that the present is a case where the Revenue is not entitled to invoke the extended period of limitation. The first substantial question of law is, thus, answered against the Revenue.”

(Emphasis supplied)

ds



8.3 I also rely on the Order passed by the Hon'ble CESTAT, New Delhi passed in the case of Commandant, CISF Unit reported as 2019 (24) G.S.T.L. 232 (Tri. - Del.), wherein the Hon'ble Tribunal has held that,

“8. Also coming to the aspect of limitation as has been raised by the respondent, we observe that the period of demand herein is w.e.f. April, 2009 to June, 2012. SCN is issued on 9-9-2014. It is clear that the entire period of demand is beyond the normal period of one year. The service provider herein is Government undertaking. Service recipient is also a public sector undertaking. There cannot be a single good reason for either of the two to have an intent to evade the tax, there is otherwise no evidence by the Department to prove any positive act on part of the service provider which may amount as mens rea on the part of the provider to evade tax. Rather from the above discussion it is apparent that SCN was issued under notional presumption of free accommodation to be the part of consideration which otherwise was not the liability of the service provider in the given circumstances. Hence, to our opinion, there appears no case of any suppression or mis-representation of facts on part of the service provider (CISF). The Department had no occasion to proviso to Section 73 of the Finance Act, 1994 for invoking the extended period of limitation. Seeing from this angle, SCN is hit by the principle of limitation.”

(Emphasis supplied)

8.4 In view of the above, I hold that extended period of limitation under Section 73 of the Act is not invocable in the present case. Hence, demand beyond normal period is barred by limitation. Further, on examining facts, I find that demand for normal period of limitation is also barred by limitation considering that demand for the period from 1.4.2016 to 31.1.2017, which has been held to be taxable, was required to be issued within 30 months from the relevant date. I find that the Show Cause Notice was issued to the Appellant on 16.1.2020, which is beyond 30 months from relevant date for the period from 1.4.2016 to 31.1.2017. Hence, demand for the period from 1.4.2016 to 31.1.2017 is also barred by limitation.

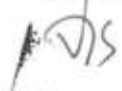
9. In view of above discussion, I hold that the impugned order confirming demand of service tax of Rs. 84,354/- is not sustainable and required to be set aside and I order accordingly. Since, the demand is set aside, recovery of interest and penalty of Rs. 84,354/- imposed under Section 78 are also set aside.


10. In view of above, I set aside the impugned order and allow the appeal.

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

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



सत्यापित,

 विपुल शाह
 अधीक्षक (अपील्स)


 (ARHILESH KUMAR)
 Commissioner (Appeals)

By RPAD

To, M/s State Charges (Government of Gujarat) Gujarat Maritime Board, Near ST Bus Stand, Porbandar.	सेवा में, गुजरात मैरिटाइम बोर्ड, एसटी बस स्टैंड के पास, पोरबंदर.
---	---

प्रतिलिपि:-

- 1) मुख्य आयुक्त, केन्द्रीय वस्तु व सेवा कर एवं केन्द्रीय उत्पाद शुल्क, अहमदाबाद क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, केन्द्रीय वस्तु व सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर को आवश्यक कार्यवाही हेतु।
- 3) सहायक आयुक्त, केन्द्रीय वस्तु व सेवा कर एवं केन्द्रीय उत्पाद शुल्क मण्डल, जूनागढ़ को आवश्यक कार्यवाही हेतु।
- ✓ 4) गार्ड फ़ाइल



