



::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

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DIN-20211264SX000042424F

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/11/BVR/2021	BHV-EXCUS-000-JC-MR- 005 to 006-2020-21	31-03-2021

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

BHV-EXCUS-000-APP-009-2021

आदेश का दिनांक / Date of Order:	17.12.2021	जारी करने की तारीख / Date of issue:	22.12.2021
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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. J.J. Transport, Harsidhi Chambers, S.T. Road,, Porbandar-360575

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 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 अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को की जानी चाहिए।/
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.
- (ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा 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) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 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 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 अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वयं 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 नियमवली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है 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 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 अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वयं 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 is more than five lakhs or less, Rs.5000/- 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/-



- (ii) वित्त अधिनियम 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in 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.
- (iii) 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 जमाना विवादित है, या जमाना, जब केवल जमाना 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 सी गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं 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 कोपनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौधी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:
(i) यदि माल के किसी नुकसान के मामले में, जहाँ 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 छूट (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) सन्निहित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो छूटी केडीटी इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश को 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 है। /
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
(v) उपरोक्त आवेदन की दो प्रतियाँ 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 प्रतियाँ संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साथ ही 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 O/O and Order-in-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहाँ संलग्न रकम एक लाख 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 इन आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस लक्ष्य के होते हुए भी की लिखा पट्टी कार्य में 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-1 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 संबंधित 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. J. J. Transport, Porbandar (hereinafter referred to as "Appellant") has filed Appeal No. V2/11/BVR/2021 against Order-in-Original No. BHV-EXCUS-000JC-MR-005 TO 006-2020-21 dated 31.03.2021 (hereinafter referred to as 'impugned order') passed by the Joint Commissioner, Central GST Commissionerate, Bhavnagar (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that during the course of audit of the records of the Appellant, it was noticed by the departmental officers that the Appellant had short paid the service tax under the category of Cargo Handling Services. Thereafter, on the basis of audit observations, following SCN was issued to the Appellant:

SCN No.	Date	Period	Amount of Service Tax demanded (in Rs.)	Penalty proposed under
V/15-40/Dem/HQ/2008	17.04.2008	16.08.2002 to 09.09.2004	19,53,972	Section 76,77, and 78 of the Finance Act, 1994 ("the Act") and Rule 7C(iii) of the Service Tax Rules, 1994 ("the Rules")

The review of the objection necessitated issue of another SCN afresh covering the entire period of 5 years prior to Audit objection. Accordingly, another SCN as detailed below was issued to the Appellant.

SCN No.	Date	Period	Amount of Service Tax demanded (in Rs.)	Penalty proposed under
V/15-84/Dem/HQ/2008	19.12.2008	16.08.2002 to 31.03.2007	Rs. 39,31,896/-	Section 76,77, and 78 of the Finance Act, 1994 ("the Act") and Rule 7C(iii) of the Service Tax Rules, 1994 ("the Rules")

2.1 Both the aforementioned SCNs were adjudicated vide OIO No. 133-134/BVR/Addl.Commr/2009 dated 20.08.2009 by the Additional Commissioner, erstwhile Central Excise, Bhavnagar vide which demand of service tax amount of Rs. 26,51,005/- was confirmed along with interest and demand of Rs. 12,80,891/- was dropped. Penalties under Section 77 and 78 of the Act were also imposed upon the Appellant.

2.2 The appeal filed by the Appellant against above OIO was dismissed by the then



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Commissioner (Appeals) vide OIA dated 25.01.2010.

2.3. Being aggrieved by the OIA, the Appellant filed appeal before the Hon'ble CESTAT, Ahmedabad. The Hon'ble Tribunal vide Order No. A/10495/2019 dated 13.03.2019 had remanded the matter back to the original adjudicating authority to re-calculate the demand as well as penalties as per the findings recorded in the above said order.

3. The adjudicating authority in remand proceedings initiated as per the direction of the Hon'ble Tribunal, vide impugned order has (1) Confirmed the demand of service tax amount of Rs. 19,40,793/- along with interest; (2) Dropped the demand of Rs. 19,91,103/-; (3) imposed a penalty of Rs. 5000/- under Section 77 of the Act; and (4) imposed a penalty of Rs. 19,40,793/- under Section 78 of the Act.

4. Being aggrieved by the impugned order, the Appellant preferred the present appeal contending, *inter-alia*, as under:

- (i) The cargo handling services pertaining to the export of goods are exempt from service tax as the same is rendered at the port area; that since the entire services are provided in the port area such services are classifiable as 'port services' and not as 'cargo handling service'; that there is no demand under the category of 'port services' in the impugned SCNs; that demand of service made wrongly under 'cargo handling services cannot be sustained and is liable to be dropped.;
- (ii) CBEC circular No. B11/1/2002/TRU dated 01.08.2002 envisages that the cargo handling services provided within port area, will fall under the category of PORT SERVICES and not under CARGO HANDLING SERVICES;
- (iii) All such invoices which pertain to the export goods must be excluded from the demand notice and such demand should be dropped;
- (iv) The para-5 of the above circular mentions that all services pertaining to import or export cargo provided at the Port Area should be covered under the 'Port services' and not under Cargo Handling Services. Since the SCN has not raised any demand under the Port Services, the same cannot be demanded under Cargo Handling Services.
- (v) The invoices mentioned in their appeal memorandum (at para 4.6) pertain to the cargo handling services provided to the shipping agents for the imported cargo arrived at Porbandar port, hence it is port services provided at the Port Area and therefore not taxable under Service Tax;
- (vi) For the years, 2003-04 (06-01-2004 to 2006-07, the above invoices were issued for cargo handling services provided Porbandar Port area for handling imported goods, stored for domestic clearance, which is classifiable under "Port Services" and is exempted when provided at port area;



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- (vii) In the definition of cargo handling service, handling of export cargo is excluded; that entire demand of service tax raised on cargo handling services for export cargo is not at all sustainable and is liable to be dropped; that the reliance is placed upon following judgments in their support :-
- (i) 2019 (28) G.S.T.L. 63 (Tri - Del, - Shokat All vs CCE
 - (ii) 2019 (22) G.S.T.L. 237 (Tri. - Mumbai) ~ CCE vs JWC Logistics Pvt Ltd
 - (iii) 2007 (8) 5.7.R. 472 (Tri.-Bang.) - Konkan Marine Agencies vs CCE
 - (iv) 2015 (40) S.T.R. 533 (Tri. - Mumbai) - CCE vs JNPT Pvt Ltd
 - (v) 2013 (31) S.T.R. 453 (Tri. - Mumbai) -J.M. Baxi & Co vs CCE
 - (vi) 2012 (28) S.T.R. 574 (Ker.)-KSIEL Vs CCE Ct
 - (vii) 2011 (22) S.T.R. 305 (Tri. - LB) - Western Agencies Pvt Ltd,vs CCE
- (viii) Other than export cargo, wherever the cargo handling services are provided, in the port area, such services would get covered in the "Port Services" in the light of the judgment of Larger bench in the case of Western Agencies Pvt Limited Vs. CCE (2011(22)STR(305(Tri.LB) ; since there is no demand raised under port service, the same cannot be sustained under cargo handling service at all;
- (ix) The following invoices (as mentioned in para 5.4 of the Appeal memo) were raised for services provided for handling export cargo; that above circular exempts the cargo handling services provided for handling export cargo, as it clearly mentions that the handling of export cargo is not included in the cargo handling services and therefore service tax on such services cannot be demanded.;
- (x) All the copies of the invoices raised from 01.04.2005 to 31.03.2007 was also submitted to the adjudicating authority alongwith reply to the SCN but the same has not been considered.
- (xi) The entire issue is based on interpretation of classification of services, and notifications and circulars, the extended period of limitation cannot be applied and the demand if any, should be restricted to normal period i.e., one year only from the date of issue of SCN; that the date of issue of SCN is 19.12.2008, and therefore, the entire demand being raised for the period prior to one year i.e., prior to 20.12.2007, is not sustainable;

5. Personal hearing in the matter was fixed on 21/22.10.2021, 15.11.2021 and 01.12.2021. However, the Appellant did not appear for the hearing on any of scheduled dates nor any request was made for adjournment. As three opportunities of hearing has already been provided to the Appellant, I have no other option but to decide the matter *ex-parte* on the basis of the available records.

6. I have carefully gone through the facts of the case, the impugned order and the Appeal Memorandum filed by the Appellant. The issue to be decided in the case is whether the impugned order confirming service tax demand of Rs. 19,40,793/- under Section 73 of the Act, along with interest under Section 75 and imposing penalty under Sections 77 and



Section 78 of the Act is correct, legal and proper or not.

7. Ongoing through the records, I find that the adjudicating authority has initiated the adjudication process on the basis of direction issued by the Hon'ble Tribunal vide their Order No. A/10495/2019 dated 13.03.2019. The text of the above order has been reproduced at Para-12 of the impugned order. I find that the Hon'ble Tribunal vide above order had remanded the matter for the limited purpose of re-calculating the service tax demand in respect of supply of Terex loader only (Para-9 of the order). I have also observed that the Appellant has not contended that it has challenged the above said order before any higher Appellate Authorities. Therefore, the Hon'ble Tribunal's abovementioned order has attained finality.

7.1 . I find that in view of the direction issued vide the Hon'ble Tribunal's order, the adjudicating authority, in remand proceedings, was required to decide the service tax demand pertaining to supply of Terex loader only. I find that the adjudicating authority has already recorded his findings on above issue at Para-19 of the impugned order. I further find that the Appellant has not challenged the above findings in the present proceedings.

8. The Appellant has also argued that their cargo handling services pertaining to the export goods are exempt from service tax. I find that the Appellant had raised this argument before the Hon'ble Tribunal also. However, the Hon'ble Tribunal in their Order dated 13.03.2019 supra has observed that the Appellant had not furnished evidence in support of its contention, so did not allow the benefit on this count (Para 7 of the order). As the Appellant has not challenged the above order, the issue has attained finality and it cannot be reopened especially when the Hon'ble Tribunal had remanded the matter for the limited purpose of re-calculating the demand respect of supply of Terex loader only.

9. The Appellant's another argument is that their entire services are provided in the port area and hence, services are classifiable as 'port service' and not as 'cargo handling service'. The Appellant further argued that since there is no demand under the category of 'port services' in the impugned SCNs, demand of service tax under 'cargo handling services' is liable to be dropped. In my view, the above issue, which has not been raised by the Appellant in earlier proceedings which travelled upto the Hon'ble Tribunal, cannot be raised in present proceedings. My views are supported by the following judgments:

- (1) BHARTI TELECOM LTD.Vs.CC2001 (134) E.L.T. 327 (S.C.).
- (2) GUJARAT STATE FERTILIZERS & CHEMICALS LTD Vs. CCE 2016 (344) E.L.T. 326 (Tri -Ahmd.)
- (3) V. DHANAPAL Vs.CCE2010 (251) E.L.T. 247 (Tri.-Chennai).



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Accordingly, I am not inclined to entertain the above argument of the Appellant in this proceedings, which has arisen on account of directions of the Hon'ble Tribunal.

10. The Appellant has argued that as the entire issue is based on interpretation of classification of services, and notifications and circulars, the extended period of limitation cannot be applied in its case. On this point, I would like to refer to the Hon'ble Tribunal's observations in their order dated 13.03.2019 which reads under: -

"It is seen that in the instant case, revenue has clearly pointed out that the appellant had not filed ST-3 Returns and not taking service tax registration and thus, in the instant case, the extended period of limitation has rightly been invoked. It is seen that the appellant had been operating for almost 5 years. It is apparent that the appellant were aware of provision of law, since in the current competitive field, it is natural to keep tab on all laws. "

In view of above explicit observations of the Hon'ble Tribunal, the Appellant's argument against invocation of extended period does not survive. As the Appellant had suppressed the material facts from the department as observed by the Hon'ble Tribunal, the penalty under Section 78 of the Act is automatically attracted. I also find that the penalty under Section 77 of the Act is also rightly imposed by the adjudicating authority.

11. In view of the above findings, I uphold the impugned order and reject the appeal filed by the Appellant.

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

12. The appeal filed by the Appellant is disposed off as above.

Attested

 Superintendent
 Central GST (Appeals)
 Rajkot


 (AKHILESH KUMAR)
 Commissioner (Appeals)
 17th December, 2021.

By RPAD

To M/s. J.J.Transport, 1 st Floor, Harsiddhi Chambers, S.T.Road, Porbandar.	एमएस जे.जे.ट्रांसपोर्ट पहली मंजिल, हरसिद्धि चेम्बर्स, एस.टी. रोड, पोरबंदरा
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प्रति:-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) प्रधान आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 3) संयुक्त आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर, को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फ़ाइल।



