आयुक्त का कार्यालय,
केंद्रीय जी. एस. टी. एवं
केंद्रीय उत्पाद शुल्क ,अहमदाबाद – उत्तर,
कस्टम हॉउस, प्रथम तल,
नवरंगपुरा ,अहमदाबाद- 380009

OFFICE OF COMMISSIONER
CENTRAL GST & CENTRAL EXCISE,
AHMEDABAD- NORTH
CUSTOM HOUSE, 1ST FLOOR,
NAVRANGPURA, AHMEDABAD-380009

फ़ोन नंबर/ PHONE No.: 079-27544557 | फैक्स/ FAX : 079-27544463 | E-mail:- oaahmedabad2@gmail.com

निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-18/OA/2019

आदेश की तारीख/Date of Order : - 31.12.2020
जारी करने की तारीख/Date of Issue :- 31.12.2020

DIN NO:20201264WT000082425E

द्वारा पारित/Passed by:- एम. एल. मीणा / *M.L.Meena*
अपर आयुक्त / Additional *Commissioner*

मूल आदेश संख्या / Order-In-Original No. 30/ADC/MLM/2020-21

जिस व्यक्ति (यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है। This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरूद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क , केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी ,अहमदाबाद 380015-को प्रारूप संख्या ई.ए-1 (E.A.-1) में दाखिल कर सकता है। इस अपील पर रू .2.00 (दो रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 2.00 only.

इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले से करने अपील में (अपील) 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. (as per amendment in Section 35F of Central Excise Act, 1944 dated 06.08.2014)

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या इ.ए.-1 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति।

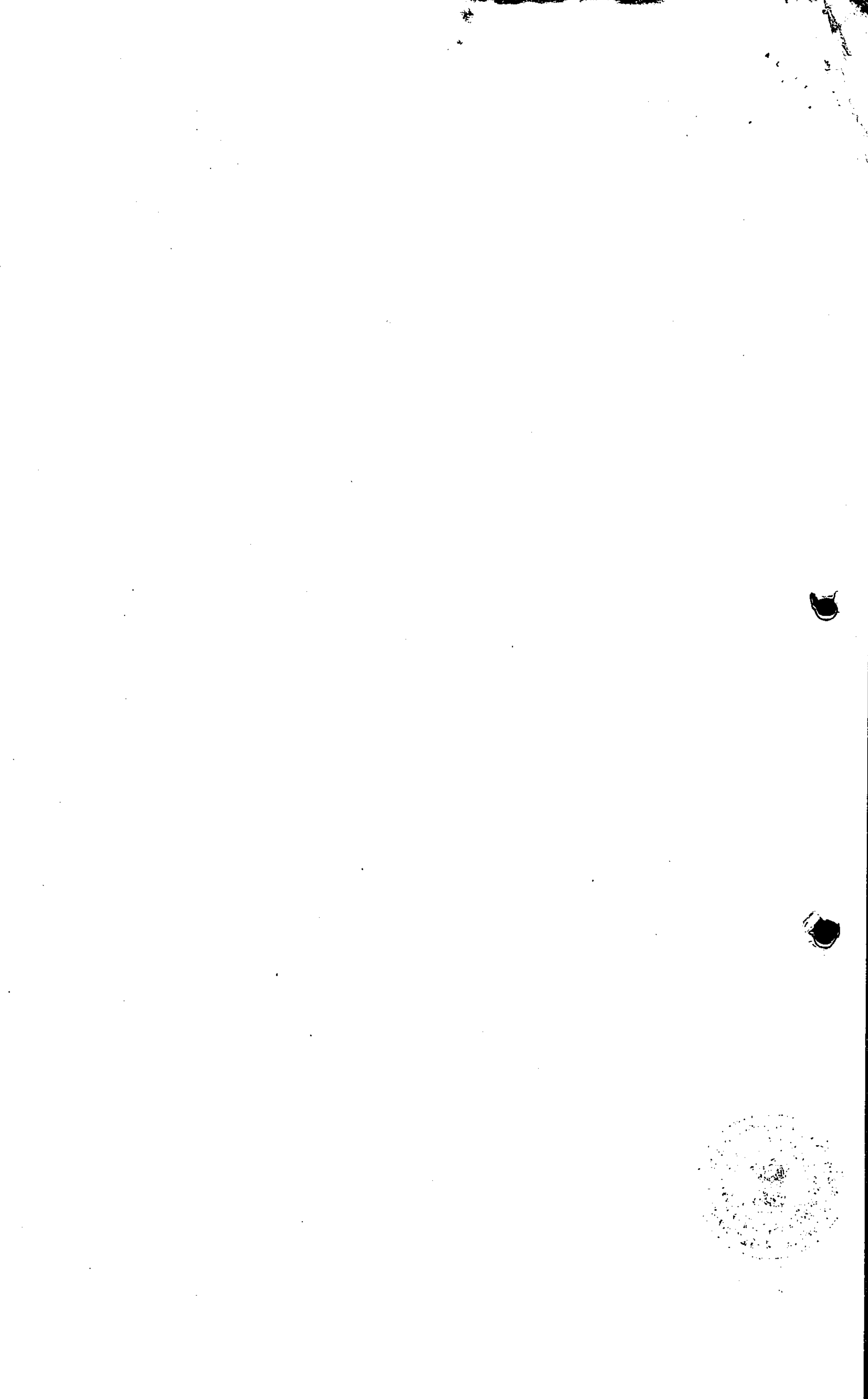
(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरूद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू) 2.00 .दो रूपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(1) Copy of accompanied Appeal.

(2) Copies of the decision or, one of which at least shall be certified copy, the Order Appealed against OR the other order which must bear a court fee stamp of Rs.2.00.

कारण बताओ सूचना/ Show Cause Notice No. F No VI/1(b)CTA/Tech-4/SCN/APPPL/2019-20 dated 15.04.2019 issued to M/s. Adani Petronet (Dahej) Port Pvt.Ltd, Adani House, Near Mithakali Six Roads, Navrangpura, Ahmedabad 380 009.



Brief facts of the case:

M/s Adani Petronet (Dahej) Port Pvt Ltd, Adani House, Near Mithakali Six Roads, Navrangpura, Ahmedabad 380 009 (hereinafter called as the 'assessee') were holding a Service Tax Registration No AAECA5046RST001. They are providing taxable services namely Port services (minor ports), Consulting Engineer services, Maintenance of Repair Services etc.

2 During the course of audit of the Service Tax records of the said assessee, the following observations were raised by the Audit officers-

Revenue Para No 2 - Non-payment of service tax under 'port service'

3. It was noticed from the verification of the records of the said assessee that they had claimed exemption from payment of service tax in respect of two invoices, both dated 31.3.2017, one raised to M/s Nobel Natural Resources India P Ltd, Bhimasar and another to Mis Noble Natural Resources India P Ltd, Gurugram. It was seen that the invoices raised to the two parties mentioned the description of service as 'Cargo unloading, packing and loading of wheat (Imp)'. They have further mentioned the service category as 'port service' and remarks as 'Terminal Handling charges'. It has been the contention of the said assessee that no service tax was payable as the services provided were in relation to Agricultural produce.

4. It appeared that the services were in the nature of 'port service', a communication was sent to the said assessee on 26.9.2018 to explain their position. The said assessee have stated that the services were in the nature of Handling (Loading, Unloading etc) of wheat (agricultural produce). It *was* further stated that no service tax was leviable in terms of the provisions of Section 66D((d)(v) of the Finance Act, 1994 ('Act'), as the output service were related to agriculture or agricultural produce by way of loading, unloading, packing, storage or warehousing.

5. Against a communication dated 05.02.2019 and summons dated 15.02.2019, the said assessee under their letter No.APDPPL/audit/2018-19 dated 19.02.2019 have submitted the copies of agreement entered with M/s.Noble Natural Resource India Pvt Ltd.

6 On scrutiny of the agreement between the said assessee and M/s Nobel Natural Resource Pvt Ltd, it was mentioned that Terminal Handling Charges ('THC') included all types of terminal handling activities for which prices were mentioned in the agreements. As per clause (c) of the agreement, it is noted that Port infrastructure development charges are included in the terminal handling charges on FOR basis for all dispatches made by rakes.

7. The relevant text to Section 65B(44) of the Act defining 'service' reads as under:-

"service means' any activity carried out by a person for another for consideration, and includes a declared service".

"Taxable service" defined under Section 65(51) of the Act reads as under:-

"taxable service" means any service on which service tax is leviable under section 66B"

8. It appeared from the above that there is an activity carried out by the said assessee in

terms of terminal handling. The activity has been carried out by the said assessee for their customers. There is a consideration received by the said assessee from their customers. Therefore, it appeared that the activity carried out by the said assessee falls within the meaning of 'service', as defined under the provisions of Section 65B(44) of the Act.

9 It also appeared that there are a host of services provided by the said assessee to their customers. Therefore, in order to conclude as to whether the services are taxable or otherwise, recourse has to be taken to the provisions of Section 66F of the Act which deals with the principles of interpretation of services.

10. It appeared from the activities carried out by the said assessee that there are various elements of service provided to their customers like Port and Dock charges, Port dues, Cargo Handling and Storage charges, Railway Haulage charges, Container Handling charges, Labour charges for handling goods, Demurrage charges, Terminal Handling charges etc. They receive consideration for these services. These elements of service are naturally bundled in their ordinary course of business. Therefore, in case of naturally bundled services, the service which would give such bundle its essential character would be the service provided.

11. It appeared that the said assessee is providing 'port service' which is the main service or essential service. The port service is the essential service in the natural bundle of service, which includes terminal handing services. Therefore, it appeared that the service provided would be port services in terms the principles of interpretation of bundled services, as envisaged under the provisions of Section 66F of the Act. It also remains a fact that the said assessee have mentioned the services as 'port service'.

12. It is seen that the port services which includes terminal handling do not find mention in any of the provisions of Section 66D of the Act. It, therefore, appeared that they do not fall under the negative list and therefore, are taxable services. Further, there is no exemption to port services provided by the said assessee, under the mega exemption Notfn No 25/2012-ST dated 20.6.2012, as amended or any other notification issued under the Act. Accordingly, it appeared that the port services provided by the said assessee are taxable and liable for payment of service tax. The activity appeared to be taxable, as defined under Section 65B (51) of the Act.

13. In view of the above discussions, it appeared that the said assessee have contravened the provisions of -

- Section 68 of the Act read with Rule 6 of the Service Tax Rules, 1994 ('Rules') as they have failed to pay service tax at the rate specified in section 66 in such manner and within such period as may be prescribed;
- Section 70 of the Act read with Rule 7 of the Rules as they have failed to assess their tax liability properly and failed to file proper returns as prescribed.

14. M/s.Nobel Natural Resources India Pvt.Ltd of Bhimasar and Gurugram, it is seen that the assessee have provided services for a taxable value of Rs.3,16,04,530/- for the period 2016-17. Accordingly, service tax not paid amounting to Rs.47,40,680/- is liable to be demanded and recovered from the assessee under the proviso to Section 73(1) of the Act by invoking the extended period of time of five years as there is a case of suppression of facts with an intent to evade the payment of service tax. It appeared that the assessee has not paid the Service Tax amounting to Rs.47,40,680/- as discussed above and therefore, interest is to be charged and recovered from them under the provisions of Section 75 of the Act. It appeared that by the act of not disclosing the amount of consideration received on account of the services provided by the said assessee, the assessee has suppressed the material facts with an intention to evade the payment of service tax as discussed above and it therefore, appeared that the assessee in addition to the payment of service tax along with interest would also be liable for penal action under the provisions of Section 78(1) of the Act.

Revenue Para No 3- Non payment of service tax on damage charges received from the shipping Company

15. During the course of audit of the financial records for the period 2014-15, it was noticed that the said assessee had received an amount of Rs 14,06,928/- from a shipping Company towards damage of port property. Despite requests, the said assessee did not produce the copy of the agreement made between them and the shipping Company.

16. It was noted that the assessee had refrained/tolerated from doing an act in lieu of receipt of amount towards damage of the port property from .the shipping Company. As it appeared to be a consideration to the assessee, there was a non payment of service tax to the tune of Rs 1,73,897/- towards the amount received by them.

17. 'Activity' has not been defined in the Act. In terms of the common understanding of the word, activity would include an act done, a work done, a deed done, an operation carried out, execution of an act, provision of a facility etc. It is a term with very wide connotation. Activity could be active or passive and would also include forbearance to act. Agreeing to an obligation to refrain from an act or to tolerate an act or a situation has been specifically listed as a declared service under section 66E of the Act.

18. Non-monetary consideration essentially means compensation in kind such as the following.

- Supply of goods and services in return for provision of service
- Refraining or forbearing to do an act in return for provision of service
- Tolerating an act or a situation in return for provision of a service
- Doing or agreeing to do an act in return for provision of service.

19. It appeared that the said assessee had tolerated an act. The said assessee has provided services of agreeing or tolerating an act for damage of port property by the shipping Company.

CGST & C.EX. COMMISSIONERATE, AHMEDABAD (stamp)

The said assessee have refrained from doing an act/tolerated an act for which they have received consideration. There is a request from the customer to tolerate/refrain/do an act which is agreed upon by the said assessee. It, therefore, appeared that there has been a service made by the assessee for a consideration by tolerating an act and for refraining to do an act, which appeared to fall within the ambit of clause (e) to Section 66(E) of the Act. The activity would amount to service within the ambit of the definition of 'service' in terms of Section 65B(44) of the Act. Further, by getting a consideration for the service provided to the shipping Company, as discussed above, the service appeared to fall within the meaning of 'declared service' as per clause (e) to Section 66E of the Act. The activity appears to be taxable also defined under Section 65B (51) of the Act.

20. On going through the financial records for the period 2014-15, the said assessee have shown an income of Rs 14,06,928/- as receipts against damage of port property. Accordingly, service tax not paid amounting to Rs 1,73,897- is liable to be demanded and recovered from the said assessee, under the proviso to Section 73(1) of the Act by invoking the extended period of time of five years, as there is a case of suppression of facts with an intent to evade the payment of service tax. It appeared that the said assessee has not paid the service tax amounting to Rs 1,73,897/- as discussed above and therefore, interest is to be charged and recovered from the assessee under the provisions of Section 75 of the Act. It appeared that by the act of not disclosing the amount of consideration received on account of damage to port property and by providing a declared service to their customers by refraining/tolerating an act falling within the ambit of clause (e) to Section 66E of the Act as discussed above, the assessee has suppressed the material facts with an intention to evade the payment of service tax, as discussed above. It, therefore, appeared that the assessee in addition to the payment of service tax along with interest would also be liable for penal action under the provisions of Sections 78(1) of the Act.

Revenue Para No.4 – Non payment of amount equal to the duty leviable on transaction value in respect of the damaged capital goods.

21. During the course of audit, it was noticed that the said assessee had received insurance claim amounting to Rs 68,66,518/- during the year 2013-14. The said assessee informed that the claim was against capital goods namely 3 pneumatic fenders numbered N-1, N-5 and N-9, damaged in an accident. It was further stated that the capital goods were used for the provision of taxable service and therefore, the cenvat credit availed was utilized for payment of their output service.

22. It appeared that as per the statement of claim, the said assessee was in the possession of the damaged capital goods after the accident. It also appeared from the pre-receipt relating to the insurance claim that after disbursal of the claim amount, he damaged capital goods becomes the property of the insuring Company. It, therefore, appeared that after the receipt of amounts as per the claim for insurance, the damaged capital goods no longer remains their property and

therefore, it accordingly, it appeared that the said assessee is required to pay an amount equal to the duty leviable on the transaction value on the damaged capital goods. Despite requests, the said assessee only gave a copy of the surveyor's report but did not furnish the copy of purchase invoice of the damaged capital goods.

23. It appeared that the assessee has purchased capital goods namely pneumatic fenders. It got damaged due to an accident. For the damaged capital goods, the said assessee have received an insurance claim amounting to Rs 68,66,518/-. In terms of the pre-receipt relating to the insurance claim, it appeared that after the disbursal of the insurance amount of Rs 68,66,518/-, the property of the damaged capital goods shifts to the insuring Company. Therefore, it appeared that the said assessee is no longer in possession of the damaged capital goods. Accordingly, it appeared that they are liable to pay an amount equal to the duty leviable on transaction value, as per the provisions of Rule 3(5A)(b) of the Cenvat Rules. The amount payable which is equal to the duty leviable on the transaction value comes to Rs 8,58,315/-.

24. In view of the above discussions, it appeared that the assessee had suppressed the material facts with an intent to evade the payment of duty by not paying an amount equal to the duty leviable on the transaction value after the disbursal of the insurance claim and accordingly, the proviso to Section 73(1) of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules is applicable for invoking the extended period of 'five years' for demand and recovery of the amount of Rs 8,58,315/-. It appeared that the assessee has not paid the amount equal to the duty leviable on the transaction value amounting to Rs 8,58,315/- as discussed above and therefore, interest is to be charged and recovered from the assessee under the provisions of Section 75 of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules. It appeared that by the act of not paying the amount equal to the duty leviable on the transaction value after the disbursal of the insurance claim, in contravention of the provisions of Rule 3(5)(A)(b) of the Cenvat Rules and not disclosing these facts in their returns, the assessee has suppressed the material facts with an intention to evade the payment of amounts, as discussed above. It, therefore, appeared that the assessee in addition to the payment of amounts along with interest would also be liable for penal action under the provisions of Sections 78(1) of the Act read with the provisions of Rule 15(3) of the Cenvat Rules.

25. In the present regime of liberalization, self-assessment and filing of returns online, no documents whatsoever are submitted by the said assessee to the department and therefore, the department would only come to know about such nonpayment of service tax/amount during audit or preventive/other checks. In the case of Mahavir Plastics Vs CCE, Mumbai reported at 2010 (255) ELT 241 (T), it has been held that if facts are gathered by department in subsequent investigation, extended period can be invoked. In the case of Lalit Enterprises reported at 2009 (23) STR 275 (T), it was held that extended period is invokable when department came to know of service charges received by appellant on verification of his accounts.

26. Therefore, M/s Adani Petronet (Oahej) Port Pvt Ltd, Ahmedabad were called upon to show cause to the Additional/Joint Commissioner, Central Tax, Ahmedabad North Commissionerate, Ahmedabad as to Why:

i. Section 67 of the Act as they have failed to take the gross amount of Rs 14,06,928/- as consideration in money for the damage of port property falling under the ambit of clause (e) to Section 66E of the Act;

ii. Service tax should not be demanded and recovered from them amounting to Rs 47,40,680/- (Rupees Forty seven lacs forty thousand six hundred eighty only) on the port service provided by them, under the proviso to Section 73(1) of the Act;

iii. Service tax should not be demanded and recovered from them amounting to Rs 1,73,897/- (Rupees One lac seventy three thousand eight hundred ninety seven only) from them on the receipt of consideration against damage of port property, under the proviso to Section 73(1) of the Act;

iv. An amount payable equal to the duty leviable on the transaction value of Rs 8,58,315/- (Rupees Eight lacs fifty eight thousand three hundred fifteen only) should not be demanded and recovered from them on the damaged capital goods, under the proviso to Section 73(1) of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules;

v. penalty should not be imposed on them under the provisions of Section 78(1) of the Act on the service tax demand at (ii) and (iii) above;

vi. interest should not be charged and recovered from them under the provisions of Section 75 of the Act on the service tax demand at (ii) and (iii) above;

vii. penalty should not be imposed on them under the provisions of Section 78(1) of the Act read with the provisions of Rule 15(3) of the Cenvat Rules on the service tax demand at (iv) above; and

viii. interest should not be charged and recovered from them under the provisions of Section 75 of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules on the service tax demand at (iv) above.

Defence Reply:

27. The assessee vide letter dated 10.02.2020, submitted the reply. Their main contention are as under:-

28. They denied the charges leveled in the show cause notice. They submitted that they have provided the services of loading, unloading, handling of cargo i.e. wheat. The agreement as a whole needs to be read to understand the true nature of transaction/service involved. They brought attention of the Department the relevant clauses from the agreement and stated that from

the clauses of the agreement, it can be understood that the service provided by them to Noble is in respect of loading, unloading, handling and transportation of wheat as mentioned in the scope of the work provided in the agreement. In respect of the said work to be performed provides for the consideration to be charged.

29. They stated that the Annexure B of the agreement states that they will charge Rs. 540 per MT on FOT (Free on Truck) basis for handling of wheat up to delivery in bags onto truck. Similarly, a charge Rs.540 per MT on FOR (Free on Rail) basis for handling of wheat upto delivery in bags onto rake. Furthermore, a charge Rs. 640 per MT on FOR (Free on Rail) basis shall be collected for handling of wheat for delivery in bags up to warehouse. The agreement uses nomenclature 'Terminal Handling Charges' in respect of the aforementioned services.

30. It is in respect of the said services they have raised invoice totaling to Rs. 3,16,04,530 which is not liable to service tax in view of Section 66D(d)(v) of the Act. The Service Tax demanded to the tune of Rs.47,40,680/- considering the services as 'port charges' are bad in law.

31. They submitted that the agreement has to be read as a whole to understand the underlying nature of the transaction. The nomenclature 'Terminal Handling Charges' or 'port services' is of no relevance. Furthermore, a mere mention of category of service as port services in the invoice does not alter the true characteristics/nature of the services provided. To support their contention, they referred to the CBIC circular 190/9/2015-5.T. dated December 15, 2015. They also placed reliance on the following case laws:-

1) **Super Poly Fabriks Ltd. vs CCE, Punjab [2008 (10) S.T.R. 545 (S.C.)] Commr. Of C.T. & C. E., Mumbai vs Bharat Petroleum Corporation Ltd [2019 (24) G.S.T.L. 347 (Bom.)]**

2) **Matherson Pudenz Wickmann Ltd. vs CCE, Noida [2006 (2) S.T.R. 63 (Tri. -Del.)]**

3) **Vijay Travels vs CST, Ahmedabad [2010 (19) S.T.R. 671 (Tri. -Ahmd.)]**

4) **Logix infrastructure Pvt. Ltd. vs Commissioner of C. Ex. &S.T., Noida [2019 (25) G.S.T.L. 59 (Tri. -All.)]**

32. Regarding Non-payment of service tax on damage charges received from the shipping company, they stated that applying the analogy of para 2.3.1 of the Education Guide fines/penalties in their case, it can be understood that the damage charges which are penalty/fine collected from the shipping company cannot be construed as a consideration and thus, it cannot be considered as a 'service' and consequently, it cannot be subjected to service tax. This submission was also communicated by the Noticee to your good self vide letter bearing reference no. APDPPL/Audit/2018-19/19022019 dated February 19, 2019, however, the same has been ignored. They further referred to the following Circulars/Case laws.

1) Circular: 192/02/2016-S.T. dated April 13, 2016:

2) UOI vs Intercontinental Consultants and Technocrats Pvt. Ltd [2018 (10) G.S.T.L. 401

3) Mormugao Port Trust vs Commissioner of Cus., C. Ex. & S.T., Goa [2017 (48) S.T.R. 69 (Tri. - Mumbai)]

4) This ruling was upheld by the Supreme Court. Refer [Commissioner v. Mormugao Port

Trust - 2018 (19) G.S.T.L. J118 (S.C.)].

5) Gondwana Club vs Commissioner of Customs & C. EX., NAGPUR [2016 (42) S.T.R. 895 (Tri. - Mumbai)]

6) Bai Mamubai Trust vs Suchitra WD/O. Sadhu Koraga Shetty [2019-VIL-454-BOM]

7) M/s Amit Metaliks Limited vs The Commissioner of Central Goods & Service Tax, Bolpur [2019-VIL-679-CESTATKOL-ST]

33. The assessee stated that in the present case the service provider (i.e.assessee) would never be willing to provide a service of damaging its own property for a consideration. Further, there is no requirement, need or interest of the service recipient to damage a property accidentally and pay for it. The demand is therefore completely baseless and presumes provision of service. In this regard, they drawn attention towards the Education Guide, para 6.7.1.

34. Regarding non-payment of amount equal to the duty leviable on the transaction value in respect of the damaged capital goods, they stated that the compensation received towards the damaged capital goods is not a consideration for the goods sold. The said capital goods were never cleared as waste and scrap. The said capital goods are still lying in stock and being used by them for providing services. They stated that considering the fact that the capital goods are still lying with them and were not cleared as waste and scrap the invocation of Rule 3(5A)(b) of CCR is *void ab initio.*

35. They stated that they received a compensation of Rs. 35,97,824 only towards two pneumatic fenders namely N1 & NS.. To justify the same, they enclosed the survey report (independently appointed by the insurance company) who have reported that the claims were in respect of two pneumatic fenders for which the compensation sanctioned was Rs. 35,97,824. They also enclosed relevant extract of the bank statement and the ledger from the books of accounts evidencing the same.

36. The assessee drawn attention towards a ruling delivery by the Tribunal in the case of **Total Oil India Pvt. Ltd. vs CCE, Belapur [2012 (276) E.L.T. 520 (Tri. - Mumbai)]**. In the said case, the revenue authorities had treated the receipt of insurance claim as a consideration towards clearance of capital goods as waste and scrap. The Tribunal, in this case, held that the amount of compensation received from the insurance company was in relation to the damaged suffered by the assessee and it cannot be treated as a consideration for the sale of goods which was sold as scrap. Applying the analogy of the aforementioned ruling in the given set of facts, it can be understood that the compensation received towards damage capital goods cannot be construed as consideration. Furthermore, as the possession of the underlying capital goods is with them.

37. They stated that the SCN has been issued based on wrong/erroneous/incorrect appreciation of the facts. It is a settled position in law that such demand is illegal and SCN based on such wrong appreciation of facts is liable to be set aside. They placed reliance on the following rulings.

(i) **Mafatlal Industries Ltd. vs UOI [1997 (89) E.L.T. 247 (S.C.)]**

(ii) **CCE, Raipur vs Kay Pan Sugandh Pvt. Ltd [2017 (352) E.L.T. 17 (Tri. -Del.)]**
(iii) **Kin-Ship Services (India) Pvt. Ltd. vs Commr. Of C. Ex. and Cus., Cochin [2008 (10) S.T.R. 331 (Tri. - Bang.)]**
(iv) **Parle Bisleri Pvt. Ltd. vs CCE, Mumbai-IV [2012 (283) E.L.T. 135 (Tri. -Del.)]**
(v) **Peer Chemicals and Metallurgy (P} Ltd. vs Commr. of Cus., Chennai [2004 (170) E.L.T. 419 (Tri. - Chennai)]**

38. They stated that that the show cause notice is not legally maintainable and liable to be dropped. They referred to the decision of the Division Bench of Allahabad High Court in the case of **A.C.L. Education centre (P) Ltd. vs UOI [2014 (33) S.T.R. 609 (All.)]** followed by the review petition before Allahabad High Court in the same case reported at **[2014 (35) S.T.R. J217 (All.)] wherein it is held that –**

"Rule 5-A, sub-rule (2) states that every assessee shall, on demand, make available to the officer authorised or the audit party, records, trial balance and income-tax audit report, if any. So here, the officer will demand the documents just to facilitate the correctness of books of accounts or the Audit Party headed by the Chartered Accountant/Cost Accountant, as the case may be, deputed by the Commissioner."

39. They stated that as per the principle of judicial discipline, any final order of the higher authorities i.e. Tribunal, High Court or Supreme Court, is required to be followed by the subordinate authority. In this regard, they submitted a few judicial precedents wherein it has been specified that in the case where the superior authority has issued any order under a given circumstance, then the subordinate authority must abide by those orders in similar circumstances.

Supreme Court in the case of UOI vs Kamlakshi Finance Corporation Ltd. [1991 (55) E.L.T. 433 (S.C.)].

Gujarat High Court in the case of Topland Engines Pvt. Ltd. Vs. UOI [2008 (9) S.T.R 331 (Guj)] has held that:

Ahmedabad Tribunal in the case of Lubi Electricals Ltd. Vs. Commissioner of Service Tax, Ahmedabad (2010 (17} S.T.R 217] has held that:

40. They stated that the revenue authorities have conducted the audit in violation of the Allahabad High Court judgement in the case of A.C.L. Education centre (P) Ltd. *(supra)* and hence, the impugned SCN which has been issued on the basis of an illegal audit is liable to be set aside.

41. They stated that the impugned SCN is legally untenable and is barred by limitation since the notice seeks to invoke the extended period of limitation beyond one year, which is inappropriate as the SCN has not demonstrated the specific instances of intent to evade payment of tax. They explained the provision of Section 73(1) of the Finance Act, 1994 under which extended period can be invokable. They submitted a number of grounds to substantiate that extended period of limitation cannot be invoked in the present case, considering the facts that there was no malafide intent on their part to evade duty.

42. They stated that there exist a plethora of judgments wherein, it has been held that

extended period of limitation cannot be invoked in any Show Cause Notice which has been issued merely on the basis of audit objections, without making further investigations. They relied the following case laws-

a. Kirloskar Pneumatic Co. Ltd. vs CCE, Pune-lll 2011 (22) S.T.R. 121 (Tri. - Mumbai)

b. Aditya College of Commerce Exam vs. CCE 2009 (16) STR 154 (Tri-Bang.)

c. Swastik Tin Works vs CCE Kanpur 1986 (25) E.L.T. 798 (Tribunal)

43. They stated that they have correctly discharged the service tax liability in accordance with the provisions provided under service tax law. Furthermore, it is a settled position in law that if the return is duly filed with the required details, then in such a scenario extended period of limitation cannot be invoked. If the revenue officers had any doubt with regard to any data filled in the return, the authorities were free to call for any information required. They submitted that they are a law abiding citizen and would have provided any legally required data. They also submitted that an assessee cannot be faulted with the allegation of suppression or malafide intention if the format of the service tax returns, which is prescribed under the law, does not fulfil the requirement of the revenue officers. In fact, the officers could have simply asked for the requisite information. Further, if the service tax returns are not serving the purpose of the revenue, the revenue department has the authority to make amendments to the format of returns. Just because the revenue authorities failed to seek the data. They cannot be blamed for suppression or malafide intention. They placed reliance in the case of CCE, Kolkata-Vi vs. ITC Ltd. [2013 (291) ELT 377 (Tribunal Calcutta/Kolkata)].

44. They stated that the extended period of limitation cannot be invoked by alleging suppression for not disclosing the details which the statute itself does not require disclosing. They relied following judicial prouncement in their support.

a. Apex Electricals (P.) Ltd. vs. UOI -1990 taxmann.com 679 (Gujarat - HC)

b. M/s Neptune Equipments Pvt. Ltd. vs. CCE, Ahmedabad - 2011-TIOL-504-CESTAT-AHM

c. Balsara Extrusions (P.) Ltd. vs. CCE & C, Surat-ll - 2001 taxmann.com 1715 (CEGAT-Mumbai)

d.M/s Saurin Investments Private limited vs. CST Ahmedabad 2009-T10L-1322-CESTAT-AHM

e. M/s.Chandra Shipping and Trading Services Vs. CCE. Vishakhapatnam-11 [2009(13) S.T.R. 655 (Tri. Bang)],

f. Anagram Capital Ltd. Vs. Commissioner of Service Tax, Ahmedabad [2010 (17) STR 55 (Tri. Ahmd)],

g. Commissioner of Central Tax Customs and Central Excise Rang Reddy Commissionerate, (Hyderabad-IV Commissionerate), Posnett Bhavan Ramkoti, Hyderabad vs M/s Quislex Legal Services Pvt. Ltd. [2019-TIOL-2090-CESTAT-HYD]

h. Pushpam Pharmaceuticals Company v. CCE Bombay [1995 (78) E.L.T 401 (S.C),

i. CCE v. Chemphar Drugs & Liniments [1989 (40) ELT- 276]

j. Tamilnadu Housing Board v. **CCE [1994 (74) ELT 9 (SC}].**

k. Uniworth Textiles v. CCE 2013 (288) E.L.T 161 (SC}

l. Cosmic Dye Chemical v. CCE 1995 (75) E.L.T. 721 SC (SC)

45. They also stated that no extended period can be invoked merely for short payment of taxes. In this regard, they relied the case of Uniworth Textiles Limited Vs. CCE, Raipur (2013-288-ELT-161-SC) and Easland Combines, Coimbatore Vs. CCE, Coimbatore (2003-152-ELT-39-SC}. They also stated that extended period can not be invoked in the cases where interpretation of law is involved. They also relied the case of **Mexim Adhesive Tapes Pvt. Ltd. vs CCE, Daman [2013 (291) E.L.T. 195 (Tri. - Ahmd.)] Lubrizol Advanced Materials India Pvt. Ltd. vs C.C.E., Vadodara-l [2013 (290) E.L.T. 453 (Tri. - Ahmd.)] Chansama Taluka Sarvoday Mazoor Kamdar Sahakari Mand Ii Ltd. vs C.C.E., Ahmedabad [2012 (25) S.T.R. 444 (Tri. - Ahmd.)] Lanxess Abs Ltd. Vs. CCE, 2011 (22) S.T.R. 587 (Tri. - Ahmd.) Indian H K.K Appachan vs. CCE Palakkad 2007 (7)S.T.R. 230 (Tri. -Bang.).**

otels Company Ltd Vs. CST, 2014-TIOL-1801-CESTAT-BANG Atwood Oceanics Pacific Ltd. Vs. CST, 2013 (32) S.T.R. 756 (Tri. - Ahmd.) K.K Appachan vs. CCE Palakkad 2007 (7)S.T.R. 230 (Tri. -Bang.).

46. They stated that as per Section 75 of the Act, as amended from time to time, a person shall be liable to pay interest only when there is a delay in the payment of tax. They have at length discussed why there does not arise recovery of the impugned service tax. Thus, when the demand of duty itself does not exist, the question of levying interest cannot arise. They placed reliance on the decision of Karnataka High Court in the case **of CCE & ST, Bangalore Vs. Bill Forge Private Limited 2012 (26) S.T.R. 204 (Kar.),** wherein it has been held that interest should not be applicable where there is no liability to discharge the tax. They stated that in view of the above clear and undisputable settled position in respect of non-applicability of interest, they requested to drop the demand.

47. They submitted that they are a law abiding taxpayer and had extended full cooperation with the revenue authorities. They never had the intention to evade payment of service tax. The impugned SCN proposes to levy penalties under Section 78 of the Act. They stated that it is not mandatory to levy penalty. Further, no penalty for non-disclosure of facts not required to be disclosed and penalty under Section 78 of the Act is not applicable. They referred to the case of **Pepsans Modern Breweries Ltd. vs CCE, Chandigarh 2008 (10) S.T.R. 511 (S.C.), Hindustan Steel Ltd. Vs. State of Orissa [1978 (2) EL T (J-159) (SC)], Akbar Badruddin Jiwani vs. Collector of Customs [1990 (47) ELT 161 (SC)]. CST, Bangalore vs. Motor World (2012-27-STR-225-Kar.) Majestic Mobikes Pvt. Ltd. vs CST, Bangalore [2008 (11) S.T.R. 609 (Tri. -Bang.)], CCE, Mangalore vs Abharan Motors Pvt. Ltd. [2011 (23) S.T.R. 72 (Tri. - Bang.). Rajasthan Textile Mills vs CCE, Jaipur [2006 (205) E.L.T. 839 (Tri. -**

Del.)], Hindustan Lever Ltd. vs CCE, Nagpur [2012 (275) E.L.T. 477 (Tri. - Mumbai)], Devans Modern Breweries Ltd. vs CCE, Chandigarh 2008 (10) S.T.R. 511 (S.C.). Interjewel Pvt Ltd vs CST, Mumbai 2015-TIOL-1223- CESTAT-MUM, M/s. Accura Valves Pvt. Ltd. Appellant vs. CCGST & CE, Nashik [Appeal No. E/86191/2018]

48. They submitted that taking into consideration the facts of the case, discussed legal position, and the judicial precedents, it is clear that they have not short paid any duty and hence they requested to set aside the impugned SCN and drop the proceedings. They requested to grant an opportunity for personal hearing before the case is adjudicated.

<u>Personal hearing:</u>

49. Personal hearing in this case was granted on 29.09.2020. Shri S Rahul Patel, CA with shri Preveen Shetty, Authorised representative appeared for the personal hearing. They reiterated the written submission made in reply to the show cause notice. It was pressed that services provided to Noble was in nature of loading/unloading of agriculture produce and eligible for exemption in terms of Seotion 66D irrespective of place of provision i.e. port. Also contended that recovery of damages were not declared as per Section 66E(e) of the Finance and accordingly, not taxable. Also submitted that pneumatic fenders for which insurance claim was received, were not cleared as waste/scrap. Hence, the reversl of credit by way of payment of tax was not warranted and the amount of insurance claim actually received of Rs.3597824/- and not Rs.68,66,518/- as alleged in the show cause notice. Finally they requested to drop the proceedings.

<u>Discussion and Findings:</u>

50. I have carefully gone through the records of the case, reply submitted to the show cause notice and submission made during the course of personal hearing. The issue is to be decided in the present case are –

i) Whether Service Tax of Rs.47,40,680/- demanded from the noticee on the port service provided by them is justified and recoverable,

ii) Whether Service Tax of Rs.1,73,897/- demanded against consideration received by the noticee for damages of port property is recoverable,

iii) Whether duty demanded to the tune of Rs.8,58,315/- for non-payment of amount equal to the duty leviable on the transaction value in respect of the damaged capital is justified,

51. Regarding the issue of non-payment of Service Tax under 'port Service', the assessee has stated that they have provided the services of loading, unloading, handling of cargo i.e. Wheat. The agreement as a whole needs to be read to understand the true nature of transaction/service involved.

[illegible] I have gone through the agreement dated 01.02.2017 entered into between M/s. Adani Petronet (Dahej) Port Pvt. Ltd and M/s. Noble Natural Resources India Pvt. Ltd, I find that as per Clause [illegible], the "Work to be performed" has been specified as –

Except otherwise provided in this Agreement, APDPPL shall provide services as enumerated in

the Annexure-A (Operational Terms & Conditions) and shall carry out all operations necessary and required to perform in accordance with the terms and conditions of this Agreement."

Annexure-A: "Operational Terms and Conditions" mentioned as under:-

"Cargo/Quantity/Vessel:

a) Cargo Material : Wheat

b) Vessel Type : Bulk Carriers

c) Vessel : Panamax/Handymax

d) Agent : To be notified.

e) ETA: The customer shall tender APDPPL Notice of Arrival (NOA) when the Vessel sails from the load port, and in addition NOA to APDPPL, at least 10days, 7days, 4days, 3days, 2days, 1day before arrival of Vessel at Port.

f) Loading/Stowage plan: The Customer shall ensure that the loading/stowage plan of the Cargo is provided to APDPPL atleast 7 days before arrival of the Vessel at Port."

53. Clause ('c) of the agreement reads as under:-

"The customer has approached APDPPL with the request to facilitate carrying out the handling operations of the cargo to be unloaded at DAHEJ Port (hereinafter referred to as the "Services" and more specifically detailed in the Agreement) which APDPPL have accepted to perform on Free Out basis subject to the terms and conditions mentioned in this Agreement".

54. The assessee has stated that they have raised invoice totaling to Rs.3,16,04,530/- which is not liable to service tax in view of Section 66D (d) (v) of the Finance Act. The noticee has also stated that they provide various services to various customers. The services provided to M/s.Noble are strictly of loading, unloading and packing of wheat (agricultural produce). They pointed out that when the taxability is being evaluated it has to be evaluated in respect of the services provided by them to M/s.Noble and not in respect of the services provided by them to other customers. They also added that the services provided to customers are not under any dispute under the present matter.

55. The noticee has stated that their case falls under Section 66D(d)(v) of the Finance Act. Section 66D (d) reads as follows:-

(i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;

(ii) supply of farm labour;

(iii) process carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;

(iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;

(v) Loading, unloading, packing, storage or warehousing of agricultural produce

(vi) Agricultural extension services;

(vii) Services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce.

56. On going through the submission made by the assessee, it is noticed that in Annexure 'A' to the contract entered between the assessee and M/s.Noble Natural Resources India Pvt.Ltd, under the heading ' Operational Terms and Conditions' under serial No.2 'Scope of Work', it has been categorically mentioned that -

" a) Terminal handling activities shall comprise the following activities/services:

i. Unloading of cargo from vessel (stevedoring),
ii. Internal transportation upto the storage godown after unloading of cargo from vessel
iii. Off-loading at the nominated plots,
iv. High heaping as per APDPPL's operational requirement,
v. Weighing during vessel discharge and dispatches
vi. Bagging in PP/HDPE/jute bags (suitable good quality empty bags shall be supplied by the customer at their own expense which shall be duly accounted for by APDPPL),
vii. Stiching of bags,
viii. Transportation upto the rail siding and railway infrastructure usage in case of rake loading on FOR basis.
ix. Loading on to the customer nominated trucks on FOT basis (based on truck availability and supply from Customer) or loading on to rakes and stacking on FOR basis (based on rake availability and supply from Indian Railways),
x. Transportation of bulk cargo upto the Adani Power Dahej Ltd Warehouse.
xi. Bagging in PP/HDPE/jute bags at APDL warehouse & stack there (suitable good quality empty bags shall be supplied by the customer at their own expenses which shall be duly accounted for by APDPPL),
xii. Loading on to the customer nominated trucks at Adani power Dahej Ltd warehouse (based on truck availability and supply from customer) loading on to rakes from Adani power Dahej) Ltd warehouse will be the sole responsibility of customer.

57. From the above, it is established that the nature of work rendered by the assessee falls under Composite Service which would not cover Section 66D (d) of the Finance Act, 1994 and as such, would not fall under exempted service. Services mentioned in Section 66D(d) has already been listed in para 55 above. I find that in the present case, the services provided by the assessee is beyond the scope of Section 66D(d) of the Finance Act, 1994 and accordingly they are not eligible for exemption. Therefore, I find that the Service Tax has rightly demanded by the Department invoking the extended period and the assessee's contention to consider the said services under 66D(d) is not tenable. Therefore, Service Tax amounting to Rs.47,40,680/- is to be recovered from them in terms of Section 73(1) of the Finance Act, 1994. They are also liable to pay interest in terms of Section 75 of the Finance Act, 1994 and penalty in terms of Section 78(1) of the Finance Act, 1994.

58. With reference to the Service Tax demanded on damage charges received from the shipping company, the SCN has alleged that the noticee has qualified as a declared service in terms of clause (e) of Section 66E of the Finance Act i.e. the activity of agreeing to the obligation and refrain from an act, or to tolerate an act or a situation or to do an act. The noticee stated that the damage charges are simply penalty/fine recovered from the shipping company for damaging their property. They also stated that the transaction does not qualify as activity as per Section 66E of the Finance Act, 1994. They submitted that the word activity has not been defined in the service tax law. However, reference can be taken from the Taxation of Services. An Education Guide dated 20.06.2012 issued by the CBEC. They cited para 2.1.1 of the Education Guide.

59. They also cited para 6.7.1 and 2.3.1 of the Education Guide to show that the no service has been rendered in the present case which cover Section 66E of the Finance Act, 1994.

60. I find that as per the Education Guide issued by the CBEC, the following has been mentioned in the below mentioned paras of Education Guide issued by the CBEC.

2.1 Activity

2.1.1 What does the word 'activity' signify?

'Activity' has not been defined in the Act. In terms of the common understanding of the word activity would include an act done, a work done, a deed done, an operation carried out, execution of an act, provision of a facility etc. It is a term with very wide connotation. Activity could be active or passive and would also include forbearance to act. Agreeing to an obligation to refrain from an act or to tolerate an act or a situation has been specifically listed as a declared service under section 66E of the Act.

6.7.1 Would non-compete agreements be considered a provision of service?

Yes. By virtue of a non-compete agreement one party agrees, for consideration, not to compete with the other in any specified products, services, geographical location or in any other manner. Such action on the part of one person is also an activity for consideration and will be covered by the declared services.

2.3.1 Would imposition of a fine or a penalty for violation of a provision of law be a consideration for the activity of breaking the law making such activity a service?

No to be a service an activity has to be carried out for a consideration. Therefore fines and penalties which are legal consequences of a person's actions are not in the nature of consideration for an activity.

61. I find that the amount recovered by the noticee from the Shipping Company is towards towards damage of property which could not be construed as service. Therefore, I am of the view that in the present case, show cause notice issued to the noticee demanding service tax on

consideration received for damaging property is not sustainable. Further, para 2.3.1 of the Education Guide has clarified that 'fines and penalties which are legal consequences of a person's actions are not in the nature of consideration for an activity. Therefore, I hold that the Service Tax of Rs.1,73,897/- on such amount received by the noticee is not chargeable as no service has been rendered by the noticee in terms of Section 66E of the Finance Act, 1994.

62. Regarding the issue of non-payment of amount equal to the duty leviable on the transaction value in respect of the damaged capital goods, the show cause notice has alleged that the goods namely Pneumatic Fenders N1, N5, and N9 were cleared as waste and scrap for which the noticee had received consideration of Rs.68,66,518/- from the insurance company. Therefore, sought reversal of Cenvat Credit under Rule 3(5A)(b) of the Cenvat Credit Rules, to the tune of Rs.8,58,315/- holding that the noticee had cleared the capital goods as waste and scrap.

63. The noticee claimed that they never cleared the goods as waste and scrap, compensation received from the insurance company is Rs.35,97,824 and the compensation received towards damaged capital goods is not a consideration for the goods sold.

64. I find that during the course of audit, the Audit Officers noticed that the assessee had received insurance claim amounting to Rs 68,66,518/- during the year 2013-14. The said assessee informed that the claim was against capital goods namely 3 pneumatic fenders numbered N-1, N-5 and N-9, damaged in an accident. It was further stated that the capital goods were used for the provision of taxable service and therefore, the Cenvat credit availed was utilized for payment of their output service.

65. The audit officers also noticed that as per the statement of claim, the said assessee was in the possession of the damaged capital goods after the accident. Further, from the pre-receipt relating to the insurance claim that after disbursal of the claim amount, the damaged capital goods becomes the property of the insuring Company. After the receipt of amounts as per the claim for insurance, the damaged capital goods no longer remains their property and therefore, the said assessee is required to pay an amount equal to the duty leviable on the transaction value on the damaged capital goods.

66. The assessee purchased capital goods namely pneumatic fenders. It got damaged due to an accident. For the damaged capital goods, they have received an insurance claim amounting to Rs 68,66,518/-. After the disbursal of the insurance amount of Rs 68,66,518/-, the property of the damaged capital goods shifts to the insuring Company. Therefore, they are liable to pay an amount equal to the duty leviable on transaction value, as per the provisions of Rule 3(5A)(b) of the Cenvat Rules the Cenvat Credit payable which is equal to the duty leviable on the transaction value comes to Rs 8,58,315/-.

67. The assessee has submitted that they have not received the amount of Rs.68,66,518/- but received only Rs. 35,97,824/-. I find that there is some discrepancy in their version because the

Audit officers during the audit itself has ascertained the value and determined the Cenvat Credit reversible on the said value. They themselves have admitted having received the sum during the audit. Further, they could not satisfactorily provide explanation during the adjudication proceedings. The details provided by the noticee have not matched with the amount received by them. Therefore, I hold that the assessee is liable to pay an amount equal to the duty of Rs.8,58,315/- leviable on the noticee on the transaction value as per the provisions of Rule 3(5a)(b) of the Cenvat Credit Rules, 2004.

68. In view of the above, it is clear that the noticee had suppressed the material facts with an intent to evade the payment of duty by not paying an amount equal to the duty leviable on the transaction value after the disbursal of the insurance claim and accordingly, the proviso to Section 73(1) of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules is applicable for invoking the extended period of 'five years' for recovery of the amount of Rs 8,58,315/-. The noticee had not paid the amount equal to the duty leviable on the transaction value amounting to Rs 8,58,315/-, interest is also to be recovered from them under the provisions of Section 75 of the Act read with the provisions of Rule 14(1)(ii) of the Cenvat Rules. The act of not paying the amount equal to the duty leviable on the transaction value after the disbursal of the insurance claim, in contravention of the provisions of Rule 3(5)(A)(b) of the Cenvat Credit Rules, 2004 and not disclosing these facts in their returns, they have suppressed the material facts with an intention to evade the payment of amounts, as discussed above. Therefore, the noticee in addition to the payment of amounts along with interest would also be liable for penalty under the provisions of Sections 78(1) of the Finance Act, 1994 read with the provisions of Rule 15(3) of the Cenvat Rules, 2004.

69. The assessee relied upon a number of case laws in their defence regarding non-applicability of Service Tax in the case of port service, and non-payment of equal to the duty leviable on transaction value in respect of capital goods, non-applicability of interest, penalty and extended period for issuing show cause notice. I find the said cases are not comparable with the present case as facts and circumstances are different in the said cases.

70. I find that in the case of Mahavir Plastics Vs CCE, Mumbai reported at 2010 (255) ELT 241 (T), it has been held that if facts are gathered by department in subsequent investigation, extended period can be invoked. In the case of Lalit Enterprises reported at 2009 (23) STR 275 (T), it was held that extended period is invokable when department came to know of service charges received by appellant on verification of his accounts.

In view of the above discussion, I hold that the Service Tax demanded from the noticee to the tune of Rs.47,40,680/- for non-payment of Service Tax under Port Service is sustainable and is to be recovered recovered in terms of Section 73(1) of the Finance Act, 1994 invoking the extended period of limitation along applicable interest and penalty. The Service Tax demanded from the noticee amounting to Rs.1,73,897/- towards amount received by the noticee for

damages of property is not sustainable in law and the demand issued to that extent is liable to be dropped.

72. I also hold that the noticee has to pay an amount equal to the duty of Rs.8,58,315/- leviable on the transaction value of Rs.68,66,518/- received by them from the insurance company in terms of Rule 3(5A)(b) of the Cenvat Credit Rules, 2004 along with interest in terms of Section 75 of the Finance Act, 1994 read with Rule 14(1)(ii) of the cenvat Credit Rules, 2004. They are also liable to penalty in terms of Section 78(1) of the Finance Act, 1994 read with the provisions of Rule 15(3) of the Cenvat Credit Rules, 2004.

73. In view of my findings and discussion above, I pass the following order:-

ORDER

i) I confirm the Service Tax of Rs.47,40,680/- (Rupees forty seven lakhs forty thousand six hundred eighty only) under the proviso to Section 73(1) of the Finance Act, 1994.

ii) I order M/s.Adani Petronet (Dahej) Pvt.Ltd, Ahmedabad to pay interest on the amount of Service Tax of Rs.47,40,680/- under Section 75 of the Finance Act, 1994

iii) I impose a penalty of Rs.47,40,680/- (Rupees forty seven lakhs forty thousand six hundred eighty only) on M/s.Adani Petronet (Dahej) Pvt.Ltd, Ahmedabad under Section 78(1) of the Finance Act, 1994.

iv) I drop the Service Tax demand amounting to Rs 1,73,897/- on the receipt of consideration against damage of port property.

v) I confirm the amount of Rs 8,58,315/- (Rupees Eight lakhs fifty eight thousand three hundred fifteen only) payable equal to the duty leviable on the transaction value (insurance amount received by the assessee) from the assessee on the damaged capital goods, under Section 73(2) of the Finance Act, 1994 read with the provisions of Rule14(1)(ii) of the Cenvat Rules, 2004.

vi) I order M/s. Adani Petronet (Dahej) Pvt.Ltd, Ahmedabad, to pay interest on the amount of Rs.8,58,315/- under the provisions of Section 75 of the Finance Act, 1994 read with Rule 14(1) (ii) of the Cenvat Credit Rules, 2004.

vii) I impose a penalty of Rs.8,58,315/- (Rupees Eight Lakhs Fifty Eight Thousand Three Hundred and Fifteen only) on M/s.Adani Petronet (Dahej) Pvt.Ltd, Ahmedabad, under the provisions of Section 78(1) of the Finance Act, 1994 read with the provisions of Rule 15(3) of the Cenvat Credit Rules, 2004.

(viii) I further Order that in the event the entire amount demanded as above is paid within thirty days from the receipt of this Order along with applicable interest, the amount of penalty liable to be paid by the noticee shall be 25% (twenty five per cent) of the penalty imposed at Sr. No.(iii and vii) above, subject to the condition that such reduced penalty is also paid within the said period of 30 days (thirty days) in terms of clause (ii) of Section 78(1) of the Finance Act, 1994.

74. The Show Cause Notice No. F No VI/1(b)CTA/Tech-4/SCN/APPPL/2019-20 dated 15.04.2019 issued to M/s. Adani Petronet (Dahej) Port Pvt.Ltd, Adani House, Near Mithakali Six Roads, Navrangpura, Ahmedabad 380 009 is disposed-of in the above manner.

(M.L. Meena)
AdditionalCommissioner,
Central GST & Central Excise,
Ahmedabad North.

F No STC/4-5-48/OA/2019

Date: 31.12.2020

By Speed Post AD

To

Mis Adani Petronet (Dahej)
Pvt Ltd Adani House
Near Mithakali Six Roads Navrangpura,
Ahmedabad 380 009.

Copy to:

1) The Commissioner, Central GST & Central Excise, Ahmedabad North.
2)The Deputy/Assistant Commissioner, Division-VII, Central GST & Central Excise, Ahmedabad North.
3) The Superintendent, Central GST & Central Excise Range I, Division-VII, Ahmedabad North
4) Guard File.

③ Copy

प्राप्त किया
वस्तु एवं सेवाकर, अहमदाबाद उत्तर
दिनांक: 01.01.2021
हस्ताक्षर: [illegible]
नाम: