



केन्द्रीय उत्पाद शुल्क एवम सेवा कर आयुक्तालय , भावनगर
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX
प्लॉट नं. 6776-बी/1, 'सिद्धि सदन' बिल्डिंग,
PLOT NO. 6776/B-1, "SIDDHI SADAN" BUILDING,
नारायण उपाध्याय मार्ग, भावनगर-364001
NARAYAN UPADHYAY MARG, BHAVNAGAR-364 001.
दूरभाष : (0278) 2523627 फ़ैक्स : 0278-2513086

रजिस्टर्ड डाक पावती द्वारा

By R.P.A.D.

फाईल सं. V/15-06/Adj/DGCEI/2010

F. No.

आदेश की तारीख : 21/04/2011

Date of Order :

जारी करने की तारीख : 21/04/2011

Date of Issue :

पारितकर्ता

Passed by

श्री एन के भुजबल

SHRI N. K. BHUJABAL

आयुक्त, केन्द्रीय उत्पाद शुल्क एवम सेवा कर, भावनगर

Commissioner, Central Excise and Service Tax, Bhavnagar

- S. tax. 2011
audit

मूल आदेश संख्या Order-in-Original No : 5 to 10/BVR/Commissioner/2011

1. आदेश की यह प्रति जिसको जारी किया गया है उनके व्यक्तिगत उपयोग के लिए निःशुल्क भेजी जा रही है ।

1. This copy of order is granted free of charges for private use of the person(s) to whom it is issued and sent.

2. यदि कोई व्यक्ति इस आदेश से स्वयं को असंतुष्ट अनुभव करता है , तो इस आदेश के विरुद्ध सीमा शुल्क , केन्द्रीय उत्पाद शुल्क एवं सेवा कर अपीलीय प्राधिकरण , ओ-20 , मेघाणी नगर , नया मानसिक अस्पताल संकुल , अहमदाबाद को केन्द्रीय उत्पाद शुल्क अधिनियम की धारा 35-बी की उपधारा 1(a) की शर्तों के आधार पर अपील कर सकता है । धारा 35-बी (1) (परंतुक) (a) से (d) के अंतर्गत मामले जैसे कि हानि , छूट , बॉण्ड के अंतर्गत निर्यात , शुल्क क्रेडिट के मामले , आवेदन के पुनरीक्षण के मामलों में आवेदन भारत सरकार के संयुक्त सचिव , राजस्व विभाग , वित्त मंत्रालय , नई दिल्ली को बंधनकर्ता रहेगा ।

2. Any person(s) deeming himself aggrieved by this Order may appeal against this order to The Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Ahmedabad, O-20, Meghani Nagar, New Mental Hospital Compound, Ahmedabad, in terms of the provision of Section 35B(1)(a) of the Central Excise Act, 1944. If the case covered under the category specified in Section 35B(1) (Proviso) (a) to (d), i.e. Loss, Rebate, Export under Bond, duty credit cases, the Revision application shall lies to the Joint Secretary to the Government of India, Department of Revenue, Ministry of Finance, New Delhi.

3. अपील फॉर्म E.A.-3 में केन्द्रीय उत्पाद शुल्क (अपील) नियम , 2001 के नियम 3 के उपनियम 2 में विनिर्दिष्ट व्यक्ति द्वारा की जानी चाहिए ।

3. The Appeal should be filed in form EA.-3. It shall be signed by the person as specified in Rule 3(2) of the Central Excise (Appeals) Rules, 2001.

4. केन्द्रीय उत्पाद शुल्क अधिनियम , 1944 की धारा 35-B के अंतर्गत अपील इस आदेश की प्राप्ति के तीन माह के अंदर दर्ज करवानी होगी ।

4. The appeal should be filed within three months from the date of communication of this order. (Section 35B of the Central Excise Act, 1944).

5. यह अपील चार प्रतियों में दाखिल की जाए और जिसके विरुद्ध अपील की गई है , उस आदेश की समान संख्या में प्रतियां संलग्न की जाए (इन में से कम से कम एक प्रति अधिप्रमाणित होनी चाहिए) । उक्त अपील के समर्थक सभी दस्तावेज चार प्रतियों में भेजे जाए । उक्त अपील व्यक्तिगत रूप से रजिस्ट्रार के समक्ष प्रस्तुत की जाए या पंजीयक के नाम से रजिस्ट्री डाक द्वारा भेजी जाए । परन्तु उक्त रजिस्ट्रार के कार्यालय में प्राप्ति की तारीख नियत अवधि में होगी ।

5. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (One of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate. The appeal shall be presented in person to the Register or sent by Registered Post addressed to the Registrar. But the date of receipt in office of the said Registrar in time or otherwise will be the relevant date for the purposes of limitation of time.

6. फीस का भुगतान न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के पक्ष में रेखांकित बैंक ड्राफ्ट द्वारा अधिनियम के प्रावधानों के अंतर्गत करना अपेक्षित है। यह ड्राफ्ट जहाँ पीठ स्थित है, किसी राष्ट्रीयकृत बैंक की किसी शाखा के नाम पर जारी किया जाए और उस उक्त अपील प्रपत्र के साथ डिमाण्ड ड्राफ्ट संलग्न किया जाना चाहिए।

6. The Fee is required to be paid as under through a cross Bank Draft in favour of the Assistant Registrar of Bench of the Tribunal on a branch of any Nationalized Bank located at the place where the Bench is situated and it shall be attached to the form of appeal.

(क) जहाँ पर मांगा गया शुल्क ब्याज और दण्ड रूपरु 50,00,000/- (रुपरु पचास लाख) से ज्यादा हो, रु. 10,000/- (रुपरु दस हजार)

(a) Where the amount of duty and interest demanded and penalty is levied is more than ₹50,00,000/- (Rupees Fifty Lakhs), ₹ 10,000/- (Rupees Ten Thousand);

(ख) जहाँ पर मांगा गया शुल्क ब्याज और दण्ड रूपरु 5,00,000/- (रुपरु पांच लाख) से अधिक हो लेकिन, रूपरु 50,00,000/- (रुपरु पचास लाख) से कम हो 5,000/- (रुपरु पांच हजार)

(b) Where the amount of duty and interest demanded and penalty levied is more than ₹5,00,000/- (Rupees Five Lakhs) but not exceeding ₹ 50,00,000/- (Rupees Fifty Lakhs), ₹ 5,000/- (Rupees Five Thousand);

(ग) जहाँ पर मांगा गया शुल्क ब्याज और दण्ड रूपरु 5,00,000/- (रुपरु पांच लाख) अथवा कम हो, रूपरु 1,000/- (रुपरु एक हजार)

(c) Where the amount of duty and interest demanded and penalty levied is ₹ 5,00,000/- (Rupees Five Lakhs) or less, ₹ 1,000/- (Rupees One Thousand);

7. इस आदेश की प्रतिलिपि पर न्यायालय शुल्क मुद्रांक अधिनियम, 1970 की अनुसूची 1 मद 6 के अंतर्गत निर्धारित 50 पैसे का न्यायालय शुल्क मुद्रांक (कोर्ट फी स्टाम्प) लगाया जाना चाहिए।

7. The Copy of this order attached therein should bear a Court fee stamp of 50 paise as prescribed under schedule 1 of Article 6 of the Court fee stamp Act, 1970.

8. उक्त अपील फॉर्म के साथ शुल्क / दण्ड की अदायगी का प्रमाण संलग्न किया जाना चाहिए।

8. Proof of payment of duty, penalty etc. should also be attached in original to the form of appeal.

9. अपील पर रु. 5 (रुपरु पांच) का न्यायालय शुल्क मुद्रांक (कोर्ट फी स्टाम्प) लगाया जाना चाहिए।

9. Appeal should bear a Court Fee Stamp ₹ 5/-.

10. पूर्ण जानकारी हेतु केंद्रीय उत्पाद शुल्क (अपील) नियम, 2001 एवम CEGAT (कार्यविधि) नियम 1982 देखें।

10. Please refer to the Central Excise (Appeals) Rules, 2001 and the CEGAT, Procedure Rules, 1982 for complete details.

To,
Port Officer,
Gujarat Maritime Board,
Ship Recycling Yard, Alang,
Distt. Bhavnagar
Gujarat – 364001

विषय : कारण बताओ नोटिस संख्या :

Subject: Show Cause Notice No. (i) V/15-138/ST/DIV/08-09 dated 16.04.2009, (ii) V/15-139/ST/DIV/08-09 dated 16.04.2009, (iii) V/15-140/ST/DIV/08-09 dated 16.04.2009, (iv) V/15-29/Dem/HQ/2009 dated 07.05.2009, (v) V/15-54/Dem/HQ/2009 dated 06.10.2009 and (vi) DGCEI/AZU/36-143/09-10 dated 11.08.2010 issued to Port Officer, Gujarat Maritime Board, Ship Recycling Yard, Alang, Gujarat – 364 001.

Brief Facts :-

Port Officer, Ship Recycling Yard, Alang Port having his office, at Alang, District - Bhavnagar, (here-in-after referred to as "assessee") is acting as authorized person for Gujarat Maritime Board (here-in-after referred to as "GMB"). The assessee is providing various types of port services at Alang. The assessee is registered with the Central Excise and Service Tax department, at Bhavnagar Commissionerate and having Service Tax Registration No. AABCG6676LST017 for providing port services.

2. Following Show Cause Notices (SCNs) have been issued to the assessee.

| Sl. No. | SCN F.No. | SCN Date | SCN issuing authority | Amount (₹) | Period covered |
|---------|------------------------|------------|---|-------------|--------------------------|
| 1 | V/15-138/ST/DIV/08-09 | 16.04.2009 | Assistant Commissioner, Service Tax Division, Bhavnagar | 16,686/- | 01.06.2007 to 31.03.2009 |
| 2 | V/15-139/ST/DIV/08-09 | 16.04.2009 | Assistant Commissioner, Service Tax Division, Bhavnagar | 33,372/- | 01.06.2007 to 31.03.2009 |
| 3 | V/15-140/ST/DIV/08-09 | 16.04.2009 | Assistant Commissioner, Service Tax Division, Bhavnagar | 31,766/- | 01.06.2007 to 31.03.2009 |
| 4 | V/15-29/Dem/HQ/2009 | 07.05.2009 | Additional Commissioner, Central Excise, Bhavnagar | 7,16,272/- | 01.06.2007 to 30.09.2007 |
| 5 | V/15-54/Dem/HQ/2009 | 06.10.2009 | Additional Commissioner, Central Excise, Bhavnagar | 39,76,100/- | 01.10.2007 to 31.03.2009 |
| 6 | DGCEI/AZU/36-143/09-10 | 11.08.2010 | Addl. Director General, DGCEI, AZU, Ahmedabad | 59,27,182/- | 01.06.2007 to 31.03.2010 |

3. The facts leading to the issuance of SCN F. No. V/15-138/ST/DIV/08-09 dated 16.04.2009 are that during the course of Audit of M/s. Hussain Sheth & Sons Ship Breaking Pvt. Ltd., Alang, it was noticed that they have paid ₹ 54,000/- for the year 2007-08 and ₹ 81,000/- for the year 2008-09 towards rent to the assessee. On scrutiny of bills raised by the assessee, it was noticed that no Service Tax was collected / paid by the assessee. It has been alleged that the assessee had provided renting of immovable property service to their various plot holders for providing leasing plot for business purpose, which was leviable to Service Tax vide Notification No. 23/2007-ST dated 22.05.2007 with effect from 01.06.2007. Therefore, the assessee was liable for payment of Service Tax ₹ 16,200/-, Edu. Cess ₹ 324/- and SHE Cess ₹ 162/- totally amounting to ₹ 16,686/- along with interest on the taxable amount of ₹ 1,35,000/- received by them for leasing plot. Therefore, the assessee was called upon to show cause to the Assistant Commissioner, Service Tax Division, Bhavnagar as to why (i) the Service Tax (including Edu. Cess and SHE Cess) amounting to ₹ 16,686/- for the

period 2007-08 and 2008-09 should not be recovered from them under the provisions of sub section (1) of Section 73 of the Finance Act, 1994 by invoking extended period; (ii) Interest should not be demanded and recovered from them on Service Tax mentioned at (i) above, under the provisions of Section 75 of the Finance Act, 1994 from the due date of payment up to actual date of payment; (iii) Penalty should not be imposed upon them under Section 76 read with Section 78 of the Finance Act, 1994 for failure to pay due Service Tax within prescribed period and manner as prescribed; and (iv) Penalty should not be imposed upon them under Section 77 of the Finance Act, 1994 for failure to obtain Service Tax Registration in the service category 'Renting of Immovable Property' service.

4. The facts leading to the issuance of SCN F. No. V/15-139/ST/DIV/08-09 dated 16.04.2009 are that during the course of Audit of M/s. Shree Ram Vessel Scrap Pvt. Ltd., Alang, it was noticed that they have paid ₹ 1,08,000/- for the year 2007-08 and ₹ 1,62,000/- for the year ~~2008-09~~ towards rent to the assessee. On scrutiny of bills raised by the assessee, it was noticed that no Service Tax was collected / paid by the assessee. It has been alleged that the assessee had provided renting of immovable property service to their various plot holders for providing leasing plot for business purpose, which was leviable to Service Tax vide Notification No. 23/2007-ST dated 22.05.2007 with effect from 01.06.2007. Therefore, the assessee was liable for payment of Service Tax ₹ 32,400/-, Edu. Cess ₹ 648/- and SHE Cess ₹ 324/- totally amounting to ₹ 33,372/- along with interest on the taxable amount of ₹ 2,70,000/- received by them for leasing plot. Therefore, the assessee was called upon to show cause to the Assistant Commissioner, Service Tax Division, Bhavnagar as to why (i) the Service Tax (including Edu. Cess and SHE Cess) amounting to ₹ 33,372/- for the period 2007-08 and 2008-09 should not be recovered from them under the provisions of sub section (1) of Section 73 of the Finance Act, 1994 by invoking extended period; (ii) Interest should not be demanded and recovered from them on Service Tax mentioned at (i) above, under the provisions of Section 75 of the Finance Act, 1994 from the due date of payment up to actual date of payment; (iii) Penalty should not be imposed upon them under Section 76 read with Section 78 of the Finance Act, 1994 for failure to pay due Service Tax within prescribed period and manner as prescribed; and (iv) Penalty should not be imposed upon them under Section 77 of the Finance Act, 1994 for failure to obtain Service Tax Registration in the service category 'Renting of Immovable Property' service.

5. The facts leading to the issuance of SCN F. No. V/15-140/ST/DIV/08-09 dated 16.04.2009 are that during the course of Audit of M/s. Hussain Sheth Ispat (Ship breaking), Alang, it was noticed that they have paid ₹ 1,02,800/- for the year 2007-08 and ₹ 1,54,200/- for the year 2008-09 towards rent to the assessee. On scrutiny of bills raised by the assessee, it was noticed that no Service Tax was collected / paid by the assessee. It has been alleged that the assessee had provided renting of immovable property service to their various plot holders for providing leasing plot for business purpose, which was leviable to Service Tax vide Notification No. 23/2007-ST dated 22.05.2007 with effect from 01.06.2007. Therefore, the assessee was liable for payment of Service Tax ₹ 30,840/-, Edu. Cess ₹ 617/- and SHE Cess ₹ 309/- totally amounting to ₹ 31,766/- along with interest on the taxable amount of ₹ 2,57,000/- received by them for leasing plot. Therefore, the assessee was called upon to show cause to the Assistant Commissioner, Service Tax Division, Bhavnagar as to why (i) the Service Tax (including Edu. Cess and SHE Cess) amounting to ₹ 31,766/- for the period 2007-08 and 2008-09 should not be recovered from them under the provisions of sub section (1) of Section 73 of the Finance Act, 1994 by invoking extended period; (ii) Interest should not be demanded and recovered from them on Service Tax mentioned at (i) above, under the provisions of Section 75 of the

Finance Act, 1994 from the due date of payment up to actual date of payment; (iii) Penalty should not be imposed upon them under Section 76 read with Section 78 of the Finance Act, 1994 for failure to pay due Service Tax within prescribed period and manner as prescribed; and (iv) Penalty should not be imposed upon them under Section 77 of the Finance Act, 1994 for failure to obtain Service Tax Registration in the service category 'Renting of Immovable Property' service.

6. The facts leading to the issuance of SCN F. No. V/15-29/Dem/HQ/2009 dated 07.05.2009 are that during the course of audit of the records of the assessee by the officers of Central Excise, H.Q. (Audit), Bhavnagar, it was noticed that the assessee has provided renting of immovable property service to their plot holders for providing leasing plot for business purpose and received amount of ₹ 59,95,080/- for the period from 01.06.2007 to 30.09.2007. Therefore, the assessee was called upon to show cause to the Additional Commissioner, Central Excise, Bhavnagar as to why (i) the Service Tax totally amounting to ₹ 7,16,272/- (Service Tax ₹ 6,95,410/- + Edu. Cess ₹ 13,908/- + SHE Cess ₹ 6,954/-) for the period 01.06.2007 to 30.09.2007 should not be demanded / recovered from them as per proviso to Section 73(1) of the Finance Act, 1994 by invoking the provisions of extended period of five years; (ii) Interest should not be demanded and recovered from them on amount of Service Tax mentioned at Sr. No. (i) above, under the provisions of Section 75 of the Finance Act, 1994 from the due date of payment up to actual date of payment; and (iii) Penalty should not be imposed upon them under Section 77, 78 and 76 of the Finance Act, 1994.

7.1 The facts leading to the issuance of SCN F. No. V/15-54/Dem/HQ/2009 dated 06.10.2009 are that during the course of audit of the records of the assessee by the officers of Central Excise, H.Q. (Audit), Bhavnagar, it was noticed that the assessee has provided renting of immovable property service to their various plot lease holders for providing leasing of plot for business purpose. The Superintendent, Service Tax, Rural Range, Bhavnagar vide letters dated 13.04.2009, 24.04.2009 and 06.05.2009 requested the assessee to furnish the figures of rent amount received by them from their various plot holders for the period from 01.10.2007 to 31.03.2009. The assessee vide letter No. GMB/PO/Alang/Traffic/653 dated 13.05.2009 furnished the details of rent amount received by them from their various plot holders for the period 2007-08 and 2008-09. From the details, it appeared that the assessee had received amount of ₹ 86,92,620/- (calculated on pro-rata basis) for the period from 01.10.2007 to 31.03.2008 and ₹ 2,38,55,122/- for the period of 2008-09 as under.

| Sr No | Plot rent for year | Plot rent for the period | Plot rent amount (calculated on pro-rata basis) | Rate of Service Tax | Service Tax Payable (₹) | Edu. Cess Payable (₹) | SHE Cess Payable (₹) | Total tax payable (₹) |
|--------------|--------------------|--------------------------|---|---------------------|-------------------------|-----------------------|----------------------|-----------------------|
| 1. | 17385240 (2007-08) | 01.10.07 to 31.03.08 | 8692620 | 12% | 1043114 | 20862 | 10431 | 1074407 |
| 2. | 23855122 (2008-09) | 01.04.08 to 24.02.09 | 21583205 | 12% | 2589985 | 51800 | 25900 | 2667685 |
| 3. | 23855122 (2008-09) | 25.02.09 to 31.03.09 | 2271917 | 10% | 227192 | 4544 | 2272 | 234008 |
| Total | | | | | 3860291 | 77206 | 38603 | 3976100 |

7.2 Therefore, the assessee was called upon to show cause to the Additional Commissioner, Central Excise, Bhavnagar as to why (i) the Service Tax totally amounting to ₹ 39,76,100/- (Service Tax ₹ 38,60,291/- + Edu. Cess ₹ 77,206/- + SHE Cess ₹ 38,603/-) for the period 01.10.2007 to 31.03.2009 should not be demanded / recovered from them as per proviso to Section 73(1) of the Finance Act, 1994 by invoking the provisions of extended period of five years; (ii) Interest should not be demanded and recovered from them on amount of Service Tax mentioned at Sr. No. (i) above, under the provisions of Section 75 of the Finance Act, 1994 from the due date of payment up to actual date of payment; and (iii) Penalty should not be imposed upon them under Section 77, 78 and 76 of the Finance Act, 1994.

8. The facts leading to the issuance of SCN F. No. DGCEI/AZU/36-143/09-10 dated 11.08.2010 are that an intelligence gathered by the Directorate General of Central Excise Intelligence (here-in-after referred as "DGCEI") Ahmedabad Zonal Unit (AZU), Ahmedabad indicated that various port authorities falling under GMB have not discharged their Service Tax liability properly. It was gathered that appropriate Service Tax was not paid on many of the charges recovered by GMB against rendering of taxable services. Accordingly investigation was initiated under summons proceedings under the provisions of Section 14 of the Central Excise Act, 1944 as made applicable to Service Tax matters.

9.1 Information was called from head office of GMB. Information received vide their letter dated 16th July, 2009 revealed that ports of GMB were getting income from various heads such as Port Infrastructure Facilities, Marine Services, Clearing, Forwarding and Stevedoring, Storage Area and Rental, License Fees and Income from other Port Services. The income of GMB was submitted port-wise vide their letter dated 10th August, 2009. Along with the said information, they also furnished name and addresses of the Port Officers along with details of Service Tax Registration obtained by them.

9.2 Information about the Service Tax payment for the respective ports were called from the jurisdictional Central Excise Offices. Information in respect of Alang Ship Recycling Yard, which falls under Central Excise Commissionerate, Bhavnagar was received vide letter IV/16-04/AE/S/Tax/2005-06 dated 10.09.2009.

9.3 Port Officer, Alang vide his letter No. GMB/POA/2009-10/5549 dated 22nd February, 2010 submitted a reconciliation of their income as detailed in the information provided by their H.O. and income and payment of tax which has been declared by them in their ST-3 returns. A further clarification and information was provided by them vide their letter No. GMB/POA/2009-10/5822 dated 10th March, 2010.

9.4.1 Statement of Shri C. M. Rathod, Port Officer, Alang was recorded under Section 14 of Central Excise Act, 1944 (as made applicable to Service Tax matters vide Section 83 of Chapter V of the Finance Act, 1994, as amended) on 10.03.2010 in which he, inter alia stated that he is an authorized person to give statement regarding activities of Alang Ship Recycling Yard under Section 14 of the Central Excise Act, 1944; that he is over all in-charge of Alang Ship Recycling Yard, looking after the commercial aspects of Alang Ship Recycling Yard. He also stated that he is aware of all the activities related to Service Tax matters related to Alang Ship Recycling Yard.; that they have taken Service Tax Registration No. AABCG6676LST017 under Port Services; that they have one more Service Tax Registration w.e.f April, 2008 as some charges are directly collected in the name

of Government of Gujarat and Service Tax leviable on such charges is deposited separately. He, as a port officer has made application for the said Service Tax Registration also. He further stated that Alang Ship Recycling Yard as a separate entity started functioning from the year 2006-07, and the income for the earlier years was accounted in the Service Tax Registration of Bhavnagar Port. He stated that bifurcation of the income on which Service Tax has not been paid by Alang Ship Recycling Yard from the year 2006-07 as submitted by him vide letter dated 22.02.2010 is final. On being asked, he stated that only activity carried out at Alang Ship Recycling Yard is breaking of ship. The Ship Recycling Yard is authorized place for breaking of ships by Government of Gujarat.

9.4.2 His further statement was recorded in question- answer form. The questions asked and answers given by him are as under:-

Q.1 Please explain the nature of activities/ services rendered by Alang Ship Recycling yard for the amount which has been considered as non- taxable by you, in your information submitted by you vide your letter dated 22.02.2010 ?

Ans- The item wise description is as under:-

(i) Land lease rental: - The rental income is earned from the open plot given for a purpose other than ship breaking. The same is generally given for a period more than a year.

(ii) Plot Rent ship breaking: - Plots are given to person who are engaged in ship breaking activities.

(iii) Electricity Charges & fresh water supply: - Fresh drinking water is supplied to the persons engaged in the ship breaking and to whom plots have been rented. Electric wire for distribution of electricity is given to the persons to whom plots have been rented. They do not have any meter. Both are lump sum and at a combined charges, i.e ₹ 9000/- per year.

(iv) Other rental charges shown during the year 2008-09:- The charges of ₹ 5,10,000/- pertains to refundable deposit which was wrongly accounted as revenue income.

Q.2 Kindly peruse information provided by your head office vide letter dated 10.08.2009, vide which it was informed that these two are part of storage area & land rental and are chargeable to service tax. Please state than why service tax has not been paid by you on such charges.

Ans- I state that as far as Alang Ship Recycling yard is concerned, in contrary to above we have neither charged service tax on plots rented for ship breaking nor have paid service tax on the same.

Q.3 Kindly peruse Notification dated 9th July, 2003, issued from F.No. GMB/T/12(25)37-38/2003/1. Please state whether the charges such as land lease rentals , plot rent, on which service tax has not been paid are as per the said notification or otherwise.

Ans- Alang Ship Recycling yard levies charges as prescribed, described and notified by Gujarat Maritime Board only. In respect of ship breaking plots, the charges are separately specified.

Q.4 Please state as to what use the plots rented by GMB at Alang are put to use by the persons who have got them from GMB.

Ans- All the plots are rented to ship breakers.

Q.5 Are the plot holders allowed to construct any Kutcha and Pucca construction?

Ans- If they construct some small accommodations to keep their equipments/ welding equipments there is no objection raised by GMB. They are not required to take any permission for such construction.

Q.6 What is the minimum period of rent and what is the procedure of the renewal of the same ?

Ans :- Such plots are given for a minimum period of five years and renewal permission is given by our head office.

Q.7 Please elaborate the nature of such plots and how the ship breaking activity is being carried out?

Ans- As on date Alang recycling yard port have 169 plots which are all adjacent to sea shore and jutting into sea, as on date 37 plots are vacant. When the ship comes for breaking, during high tide it is pulled on the plot for breaking.

Q.8 Please provide details of income of Plot rent and land lease rental, on which service tax has not been paid by you ?

Ans- A year-wise duly certified and summarized sheet as called under summons is produced by me in my letter dated 10th March, 2010 .

9.4.3 The port officer was explained that lease rent income and plot rent income is covered under Renting of Immovable Property service which was introduced with effect from 01.06.2007. He stated that necessary clarification in this regard will be provided by their head office.

9.5. To ascertain the nature of plots which have been rented by the said assessee to various ship breakers, investigation was extended to some ship breakers.

9.5.1 Statement of Shri Ashish Agarwal, Director of M/s Ashish Ship Breakers Pvt. Limited, Bhavnagar and authorized signatory of M/s Anupama Steel Limited and M/s Ashish Vessel Demolition Pvt. Limited, was recorded under section 14 of the Central Excise Act, 1944 on 10.06.2010 in which he interalia stated that the three companies are carrying out ship breaking activity at Plot No. 105, 104 and 15 at Alang. On being asked about the plot taken on lease rent from Gujarat Maritime Board to carry out ship breaking activities, he stated that these plots are taken on payment of yearly rent and plot development fees. On being asked regarding immovable structure in these plots, he stated that these plots have boundary wall of concrete at the entrance to provide protection from intruders on one side and have a gate entrance, on other side it is sea and on the remaining two sides the boundary wall is of plate structure. Besides, they have a wooden office. He stated that some of the ship breakers have concrete built offices in the plots rented by GMB. He also stated that the plots have facility of water supply and electricity which have been provided to them by GMB.

9.6 Information furnished by the said assessee revealed that they had not paid Service Tax on amount received by them as lease rent and plot rent from the ship breakers which appeared to be classifiable under "Renting of immovable property service" with effect from 01.06.2007. Details of such income is as under:-

(Amount in ₹)

| Period | Amount of land lease rental | Amount of Plot rent | Total |
|-----------------------|-----------------------------|---------------------|----------|
| 01.06.07 to 31.03.08 | 396770 | 10795223 | 11191993 |
| 01.04.08 to 23.02..09 | 154029 | 19425863 | 19579892 |
| 24.02.09 to 31.03.09 | 8640 | 166182 | 174822 |
| 01.04.09 to 31.03.10 | 34129 | 20410247 | 20444376 |

Note: In the year 2007-08, plot rental income received was ₹ 12954267/- and land lease rental income received was ₹ 476124/-. Service tax on 'renting of immovable property service' levied w.e.f. 01-06-2007. Therefore, taxable value for charging Service Tax was determined on pro-rata basis for 10 calendar months of the year.

10.1 GMB is a body Corporate formed under Section 3 of the Gujarat Maritime Board, Act, 1981 having head office at 10-A, Opp. Air Force Station, Gandhinagar- 382 010. GMB has power to acquire, hold and dispose of property, both movable and immovable and to contract and may by name sue and be sued.

10.2 Section 2 of the Gujarat Maritime Board Act, 1981 gives following definitions in respect to immovable property :-

- (i) As per section 2(i) "immovable property" includes wharfage- rights and all other rights exercisable on, over or in respect of, land, any wharf, dock or pier.
- (ii) As per section 2(k) "land includes, the bed of sea or river below high water mark and also things attached to the earth or permanently fastened to anything attached to the earth.
- (iii) As per section 2(z-a) "wharf" includes any wall or stage any part of the land or fore- shore that may be used for loading or unloading goods or for the embarkation or disembarkation of passengers any wall enclosing or adjoining the same.
- (iv) As per section 2(e) "dock" includes all basins, locks cuts, entrances, graving docks, graving blocks, inclined planes, shipways, gridirons, mooring, transit sheds, warehouses godowns, open plots and other works and things appertaining to any dock and also the portion of the sea enclosed or protected by the arms or groynes of a harbor;
- (v) As per section 2(q) "pier" includes any stage, stairs landing place, hard jetty, floating barge or pontoon any bridges or other works connected therewith.

10.3 Section 20 of the Gujarat Maritime Board Act, 1981 empowers GMB in relation to any port to levy rates on all property and assets.

10.4 Under Section 38 of the Gujarat Maritime Board Act, 1981, GMB frames a scale of rates on payment of which and a statement of conditions under which any property belonging to, or the possession of occupation of, the board or any place within the limits of the port or port approaches may be used for the purposes specified as under:-

- (i) approaching or lying at or alongside any buoy, mooring, wharf, quay, pier, dock, land, building or places as aforesaid by vessels.
- (ii) entering upon or plying for hire at or non any wharf, quay, pier, land, building, road, bridge, approach or place as aforesaid by animals or vehicles carrying passengers or goods;
- (iii) leasing of land or sheds by owners of goods imported or intended for export or by steamer agents.
- (iv) any other use of any land, building, works, vessels or appliances belonging to or provided by the board.

10.5 GMB vide Notification No. GMB/T/12(25)/37-38/2003/2 dated 9th July, 2003 have notified various types of scales of rates for service performed by GMB and scales of rates on payment of which any property belonging to, or the possession or occupation of the GMB or any place within the limits of the port or port approaches may be used for the purposes specified under Section 38 of the Gujarat Maritime Board Act, 1981. The charges which are levied for ship-breaking operations at Alang, Sosiya, Shachana and at any other place where such operations is carried out is as under :-

- (i) Landing & Shipping Fees
- (ii) Plot Rent :- to be charged at ₹ 600/- per 10 Sq Mtrs or part thereof
- (iii) Breaking charges
- (iv) Beaching Charges

11. It has been alleged in the SCN that the investigation and scrutiny of the records and information submitted by the said assessee from time to time revealed that the said assessee is providing taxable services. Some of such charges were not declared by them in their ST-3 Returns. They had recovered plot rent and lease rent charges from renting of immovable property from the ship breakers on which no Service Tax was paid by them. Such charges recovered by them from 01.06.2007 to 31.03.2010, which escaped payment of Service Tax are detailed in Annexure A to the Show Cause Notice which has been prepared on the basis of details submitted by the assessee from time to time. The amount detailed in the Annexure A has been recovered by them for renting of immovable property under their control, which falls under "renting of immovable property services", as defined under the Finance Act, 1994.

Provisions of Renting of Immovable property service :-

12.1.1 Service tax on the 'Renting of immovable property service was introduced with effect from 01.06.2007.

12.1.2 Under Section 65 (90a) of the Finance Act, 1994 as "renting of immovable property" includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce but does not include —

- (i) renting of immovable property by a religious body or to a religious body; or
- (ii) renting of immovable property to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre;

Use in the course or furtherance of business or commerce defined by the Explanation given under sub-section (90a) of section 65 of the Finance Act, 1994 is elaborated by the following explanations :-

Explanation 1.- For the purposes of this clause, "for use in the course or furtherance of business or commerce" includes use of immovable property as factories, office buildings, warehouses, theatres, exhibition halls and multiple-use buildings;]

Explanation 2.- For the removal of doubts, it is hereby declared that for the purposes of this clause "renting of immovable property" includes allowing or permitting the use of space in an immovable property, irrespective of the transfer of possession or control of the said immovable property;

12.1.3 The taxable service under sub-section 105(zzzz) of section 65 of the Finance Act, 1994 means any service provided or to be provided to any person, by any other person in relation to renting of immovable property for use in the course or furtherance of business or commerce. Two explanations under the said sub-section further clarified the said service which are as under:-

Explanation 1.—For the purposes of this sub-clause, "immovable property" includes—

- (i) building and part of a building, and the land appurtenant thereto;
- (ii) land incidental to the use of such building or part of a building;
- (iii) the common or shared areas and facilities relating thereto; and
- (iv) in case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate,

but does not include-

- (a) vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes;
- (b) vacant land, whether or not having facilities clearly incidental to the use of such vacant land;
- (c) land used for educational, sports, circus, entertainment and parking purposes; and
- (d) building used solely for residential purposes and buildings used for the purposes of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities.

Explanation 2.—For the purposes of this sub-clause, an immovable property partly for use in the course or furtherance of business or commerce and partly for residential or any other purposes shall be deemed to be immovable property for use in the course or furtherance of business or commerce;

12.1.4 Notification No. 24/2007-Service Tax, dated 22.05.07 exempts taxable service provided by any person in relation to renting of immovable property from Service Tax equivalent to Service Tax payable on the amount of property tax, actually paid by the service provider to the local authority. In other words, Service Tax is payable on the rental amount received less the actual amount of property tax paid.

12.1.5 Some of the terms used in the above provisions of the Service Tax and relevant to the case are elaborated as under :-

- (i) **Aquaculture**:- Rearing of fish, shellfish, and some aquatic plants to supplement the natural supply.
- (ii) **appurtenant** :- Something added to another, more important thing; an appendage ; A right or thing, such as an easement, attached to or associated with land, that benefits or burdens the use or enjoyment of the property by

its owner and continues to do so when title passes to another. (Webster's New World Law Dictionary)

12.1.6 The above provisions of Finance Act, 1994 shows that the intention of Government of India was to tax the rent of immovable property as Service Tax and taxable activity is defined under sub-section 105(zzzz) of section 65 of the Finance Act, 1994 and immovable property is defined under Section 65 (90a) of the Finance Act, 1994.

12.1.7 To remove doubts and confusion, Finance Bill 2010-11 have provided that in sub- clause (zzzz) of sub-section 105 of section 65 of the Finance Act, 1994, for the portion beginning with the words "to any person" and ending with the words "business or commerce", the following shall be substituted and shall be deemed to have been substituted with effect from the 1st day of June, 2007, namely:-

" to any person, by any other person, by renting of immovable property or any other service in relation to such renting, for use in course of or, for furtherance of, business or commerce,"

The Finance bill 2010-11 have been notified to be Finance Act, 2010, vide Notification No. 24/2010- Service Tax dated 22.06.2010.

13.1 In view of the discussions in foregoing paras, it was alleged in the SCN that the said assessee was engaged in renting of immovable property bestowed on him under the Gujarat Maritime Board Act, 1981. Such immovable property was rented by them to different persons who used the same for the purpose of "Business and Commerce". The Renting of Immovable property service became taxable from 01.06.2007. The said assessee have not paid Service Tax of ₹ 59,27,182 /- (Rupees Fifty Nine Lakh Twenty Seven Thousand One Hundred Eighty Two only) on such services, as detailed and quantified in Annexure A, attached with the SCN.

14.1. The value of taxable Service for the purpose of Service Tax is defined under Section 67 of the Act. As per said Section, the value of the taxable Service shall be the gross amount charged by the service provider for such service rendered by them. Thus, the entire amount charged by them for providing taxable services would be liable to be charged for Service Tax.

14.2. Section 68 of the Finance Act, 1994 provides that every person providing taxable service to any person shall pay Service Tax at the specified rates and in such manner and within such period as may be prescribed. Further, Rule 6 of the Service Tax Rules, 1994 stipulates that Service Tax shall be paid to the credit of the Central Government, by the 5th of the month immediately following the calendar month, in which the payments are received, towards the value of taxable services.

14.3. Section 70 of the Finance Act, 1994, provides that every person liable to pay the Service Tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed. Rule 7 of the Service Tax Rules, 1994, prescribes that every assessee shall submit a half-yearly return in Form ST-3 or ST-3A as the case may be, along with a copy of the Form TR-6, in triplicate for the months covered in the half-yearly returns. Further sub-rule [2] thereto also provides that every assessee shall submit the half yearly return by the 25th of the month following the particular half-year.

14.4. The said assessee is providing taxable services, and they are also registered for the same with the jurisdictional Service Tax office. However they did not deliberately include the receipt of rental amount in the gross amount charged as shown in their ST-3 returns with the intention of evading the payment of Service Tax.

14.5. In view of above, it is alleged in the SCN that the said assessee have not paid Service Tax by suppression of facts and in contravention of provisions of the Finance Act, 1994 relating to levy and collection of Service Tax and Rules made there under with an intent to evade the payment of Service Tax. The said assessee intentionally did not include the value of receipt of Plot Rental and Land Lease Rental in their ST-3 returns. Therefore, it is proposed that the proviso to subsection [1] of Section 73 of the Finance Act, 1994 is applicable to invoke the extended period of five years for the recovery of Service Tax not paid.

14.6. In view of the above, it was further alleged in the SCN that the said assessee have contravened the provisions of:

- > Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, in-as-much as they have not paid Service Tax as detailed in Annexure-A to the SCN to the credit of the Government of India;
- > Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994, in as much as they had not declared the correct value of taxable service to the department.

15. It was also alleged in the SCN that the said assessee, have not paid the Service Tax, therefore, they are liable to penal action under Section 76 of the Finance Act, 1994. Further, it appeared that the said assessee have suppressed/ concealed the value of taxable service with an intent to evade payment of Service Tax. They have not paid Service Tax by way of suppression of facts and contravention of provisions of Finance Act, 1994 relating to levy and collection of Service Tax and Rules made there under with intent to evade payment of Service Tax. It therefore, appeared that the said assessee is liable to penal action under Section 78 of the Finance Act, 1994.

16. Therefore, vide the aforesaid Show Cause Notice, Port Officer, Alang Ship Recycling Yard, Alang having his office at Alang, District - Bhavnagar was called upon to show cause to the Commissioner of Central Excise, Central Excise Commissionerate, Bhavnagar, as to why (i) the Service Tax amounting to ₹ 59,27,182/- (Rupees Fifty Nine Lakh Twenty Seven Thousand One Hundred Eighty Two only), (includes Education Cess and Secondary and Higher Education Cess) not paid by them on "Renting of Immovable Property Services" should not be recovered from them under Section 73 of the Finance Act, 1994 by invoking extended period of limitation as per proviso to sub-section (1) of said Section 73; (ii) Interest at appropriate rate should not be demanded and recovered from them under the provisions of Section 75 of the Finance Act, 1994; (iii) penalty under the provisions of Section 76 of the Finance Act, 1994, as amended, should not be imposed on them for failure to pay Service Tax, as mentioned hereinabove; (iv) penalty under Section 77 of the Finance Act, 1994, as amended, should not be imposed on them in as much as they failed to file the prescribed ST-3 returns within stipulated period as required under the provisions of aforesaid Section 70 read with Rule 7 as amended in respect of renting of immovable property services; (v) penalty under Section 78 of the Finance Act, 1994, as amended, should not be imposed on them for suppressing the full value of taxable services and material facts from the department resulting into non-payment

of Service Tax, Education Cess and Secondary & Higher Education Cess as mentioned herein above.

DEFENCE REPLY :-

17. Shri Virk H. P. Singh, Chartered Accountant has been authorized by the assessee in connection with these six cases who has submitted separate but similar written defence reply on behalf of the assessee in respect of aforesaid six SCNs. Written defence replies were submitted vide letter dated 18.05.2009 in respect of SCN F. No. V/15-138/ST/DIV/08-09 dated 16.04.2009, letter dated 18.05.2009 in respect of SCN F.No. V/15-139/ST/DIV/08-09 dated 16.04.2009, letter dated 18.05.2009 in respect of SCN F.No. V/15-140/ST/DIV/08-09 dated 16.04.2009, letter dated 19.06.2009 in respect of SCN F.No. V/15-29/Dem/HQ/2009 dated 07.05.2009, letter dated 06.11.2009 in respect of SCN F.No. V/15-54/Dem/HQ/2009 and letter dated 21.09.2010 in respect of SCN F.No. DGCEI/AZU/36-143/09-10 dated 11.08.2010.

18.1 They referred to the definition of 'renting of immovable property' as defined under Section 65 (90a) of the Finance Act, 1994 and taxable service in this context defined under Section 65(105) (zzzz) of the Finance Act, 1994 and submitted that in their case where "vacant plot of land without any facilities clearly incidental to the use of such vacant plot of land" has been leased / rented, it is not includible in view of item (b) of Explanation 1 of the definition as being not includible item of Immovable Property and in view of the same, neither Service Tax has been collected so far and consequently nothing has been paid on that account as the same is not liable to Service Tax under 'Renting of Immovable property Service' as defined in the Act. It is submitted that they are not liable to collect / pay Service Tax on the said amount under "Renting of Immovable property Service" so far as above item is considered.

18.2 It is also submitted that the factual reality that all along "vacant plot of land" has been given on rent by their office has been disregarded and by ignoring the reality, SCNs sought to classify the same as "Renting of Immovable Property" whereas legally, as submitted above, with specific reference to the substantiating provisions, where "vacant plot of land without any facilities clearly incidental to the use of such vacant plot of land" has been leased / rented, it is not includible as taxable service.

18.3 It is further submitted that anomalous contradiction is sought to be created in the SCN by misconstruing / misinterpreting the definition of "renting of immovable property" u/s 65(90a) by not considering the definition of above "taxable service" in entirety as given u/s 65(105) (zzzz) wherein the exclusions have been specifically enumerated in Explanation I thereto but in the SCN, the liability is sought to be created on the assessee as above.

18.4 It is also submitted that with the basis of SCN not surviving / standing the scrutiny of law, there cannot be any further issue in the context of interest, penalty etc.

18.5 They submitted that the amendments inserted by Finance Act, 2010 have been with retrospective effect from 01.06.2007 and the same have been matter of litigation before various High Courts. The noteworthy cases have been Trent Ltd. V/s. Union of India [2010 (19) STR 336 (A.P.) and Home Solutions Retail Ltd. V/s. Union of India [2010 (19) STR 3 (Del)]. In both the cases, *inter - alia* the retrospective application has been challenged and principally accepted by the concerned High Courts.

18.6 They further submitted that as can be observed, the renting per se would not constitute any value addition falling within the lubric of service and the provisions of section 65(105) (zzzz) are inconsistent with the ratio legis of the Service Tax provision of Finance Act, 1994. They also, alternatively, contend that the parliament does not have legislative competence to levy Service Tax by an artificial expansion of the concept of service so as to entrench into the core of the legislative power of the state under entry 49 of List II of VII Schedule to the Constitution of India which reads "Taxes on lands and building". They also submitted that legislative dynamics qua the provisions of the Finance Act, 2010 would not be valid exercise as a validating legislation to remove the substratum of the ratio of the judgment of the Delhi High Court in Home Solution Retail India Ltd. V/s. Union of India and others in W.P. (C) No. 1659 of 2008 [200 (14) STR 433 (Del.)]. Moreover, the provision of Section 65(105) (zzzz) have been given retrospective efficacy qua Section 77 of the Finance Act, 2010 by purporting to be in the nature of validation of action taken under sub-clause (zzzz) of clause (105) of Section 65 and that such retrospective operationalisation of a taxing provision is arbitrary, independent of the question whether the Parliament had the legislative competence to enact Section 65(105) (zzzz) as enacted in the Finance Act, 2010.

18.7 They submitted that Gujarat Maritime Board is a State Government entity and is committed to follow and implement the statutory responsibilities cast on it very strictly and seriously but in view of the issues raised above and also concerns voiced at various High Courts reciprocated by immediate granting of stay on retrospective operation of above provision, it is of the considered opinion of not falling in the ambit of section, as above, and requested to bear with it till the time the issues are addressed suitably and conclusively at appropriate legal fora. This would also help it in avoiding undue and prolonged litigation in the matter.

18.8 They also requested for Personal Hearing in this case.

PERSONAL HEARING :-

19. Personal Hearing in this case was initially fixed on 07.03.2011. However, on the request, Personal Hearing was held on 08.03.2011 wherein Shri Virk H. P. Singh, Chartered Accountant, Authorised Representative of the assessee appeared and submitted that he has given a written reply already and he reiterated the same. He also submitted a written rejoinder at the time of P.H. He further submitted that GMB have only rented Plots of land on the waterfront with boundary wall on one side and gate for entry and exit. Water and Electricity connectivity have been provided. No building has been rented out in any of the plots. This does not amount to renting of building with land appurtenant thereto as no building has been provided by them hence no Service Tax is leviable. There is no practice nor legal provision for collection of Service Tax on renting of vacant land with boundary wall.

20.1 In the written rejoinder dated 08.03.2011 submitted during P.H., the contents of written reply dated 21.09.2010 have been reiterated. It is further submitted that in Para 6.1.3 of SCN, while reproducing Explanation I, wherein certain portions of sub item (i) "appurtenant" and in sub item (iv) "all common areas and facilities relating thereto" consciously made bold have been wrongly highlighted because item (i) seeks to state that immovable property includes - building and part of a building, and the land appurtenant thereto meaning thereby that the substantive renting of building and part of building would as a natural corollary include the appurtenant land also. Same way, in sub item (iv) a specific case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate would be included.

20.2 They submitted that in present case "a vacant plot of land" has been given all along and it does not have any facility whatsoever incidental to the use of such vacant land then there is no case of "appurtenant land" and / or "all common areas and facilities relating thereto within such complex or estate.

20.3 They referred to Para 3.5.1 of the SCN wherein in the context of "immovable structure in these plots" Shri Ashish Agarwal has been quoted as having stated that they have a wooden office and some ship breakers have concrete built offices having water and electricity supply provided by GMB. They submitted that "some" does not mean "all" and concrete wall at the entrance and plate structure [plates sunk in mud / soil to act as boundary] on either sides to prevent intrusion and natural bifurcation does not mean immovable structure. Thus, it becomes quite clear that the SCN seeks to generalize random observations which may not be true in all 100% cases.

20.4 It is also submitted that hypothetically taking the said transaction as "taxable service" as contemplated in SCN, the same would immediately qualify for input credit in the hands of ship breakers / plot holders and thus render the whole situation as "revenue neutral" once again rendering the whole issue raised as vain.

FINDINGS :-

21. I have carefully gone through the subject Show Cause Notices, submissions made in the written replies/ rejoinder as well as during the Personal Hearing and other evidences available on record. As the issue involved in all these SCNs is same, these six SCNs have been taken up for adjudication through a common order.

22. I find that the issue involved in these cases is whether amount received by Alang Recycling Yard, GMB towards Plot Rent for plots given to persons who are engaged in ship breaking activities and amount received towards Land Lease Rental for open plots given for a purpose other than ship breaking, is chargeable to Service Tax under the category of 'Renting of Immovable Property' or otherwise.

23. The definitions of "Renting of immovable property" as provided vide section 65(90a) and "taxable service in relation to Renting of Immovable Property" as provided vide Section 65(105) (zzzz) of the Finance Act, 1994 are relevant in this case, which are reproduced below for ease of reference.

"Renting of immovable property" includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce but does not include —

(i) renting of immovable property by a religious body or to a religious body; or

(ii) renting of immovable property to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre;

Explanation 1.- For the purposes of this clause, "for use in the course or furtherance of business or commerce" includes use of immovable property as factories, office buildings, warehouses, theatres, exhibition halls and multiple-use buildings.

[Section 65(90a)]

“Taxable service” means any service provided or to be provided- to any person, by any other person in relation to renting of immovable property for use in the course or furtherance of business or commerce.

Explanation 1.—*For the purposes of this sub-clause, “immovable property” includes—*

- (i) building and part of a building, and the land appurtenant thereto;*
- (ii) land incidental to the use of such building or part of a building;*
- (iii) the common or shared areas and facilities relating thereto; and*
- (iv) in case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate,*

but does not include-

- (a) vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes;*
- (b) vacant land, whether or not having facilities clearly incidental to the use of such vacant land;*
- (c) land used for educational, sports, circus, entertainment and parking purposes; and*
- (d) building used solely for residential purposes and buildings used for the purposes of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities.*

Explanation 2.—*For the purposes of this sub-clause, an immovable property partly for use in the course or furtherance of business or commerce and partly for residential or any other purposes shall be deemed to be immovable property for use in the course or furtherance of business or commerce;*

[Section 65(105) (zzzz)]

24. The definition of taxable service in relation to Renting of Immovable Property under section 65(105)(zzzz) of the Finance Act, 1994, has been amended vide item (h) of sub-clause (6) of clause (A) of section 76 of the Finance Act, 2010 as follows:-

“76. In the Finance Act, 1994

(A) in section 65, save as otherwise provided, with effect from such date as the Central Government may, by notification in the official Gazette, appoint, -

(1) to (5)

(6) In clause (105), -

(a) to (g)

(h) in sub-clause (zzzz),-

(i) for the portion beginning with the words “to any person” and ending with the words “business or commerce”, the following shall be substituted and shall be deemed to have been substituted with effect from the 1st day of June, 2007, namely:-

“to any person, by any other person, by renting of immovable property or any other service in relation to such renting, for use in the course of or for furtherance of, business or commerce.”;

(ii) *in Explanation 1, after item (iv), the following item shall be inserted, namely: -*

“(v) vacant land given on lease or licence for construction of building or temporary structure at a later stage to be used for furtherance of business or commerce;”

77. *Any action taken or anything done or omitted to be done or purported to have been taken or done or omitted to be done under sub-clause (zzzz) of clause (105) of section 65 of the Finance Act, 1994, at any time during the period commencing on and from the 1st day of June, 2007 and ending with the day, the Finance Bill, 2010 receives the assent of the President, shall be deemed to be and deemed always to have been, for all purposes, as validly and effectively taken or done or omitted to be done as if the amendment made in sub-clause (zzzz) of clause (105) of section 65, by sub-item (i) of item (h) of sub-clause (6) of clause (A) of section 76 of the Finance Act, 2010 had been in force at all material times and, accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, -*

*(a) to (c)
Explanation. -”*

25. The assessee has raised the contention that the Parliament does not have legislative competence to levy Service Tax by an artificial expansion of the concept of service so as to entrench into the core of the legislative power of the State under Entry 49 of List II of VII Schedule to the Constitution of India which reads “Taxes on lands and building”. It is also contended that retrospective operationalisation of a taxing provision is arbitrary, independent of the question whether the Parliament had the legislative competence to enact Section 65(105) (zzzz) as enacted in the Finance Act, 2010. They also submitted that various High Courts have voiced concern reciprocated by immediate granting of stay on retrospective operation of the provision and requested to keep the case pending till the issues are addressed suitably and conclusively at appropriate legal fora..

26. It has been observed that these issues have been decided by the Hon’ble Punjab & Haryana High Court in the case of Shubh Timb Steels Limited V/s. Union of India [2010 (20) S.T.R. 737 (P & H)], wherein it is held that the aspect of service element in renting transaction is certainly an independent aspect covered under Entry 92C read with Entry 97 of List-I and that the subject matter of impugned levy being outside the scope of entry 49 of List-II, power of Union Legislature (Parliament) is undoubted. Further, retrospective effect to the amendment from 01.06.2007 has also been upheld. Relevant paras of the said judgment are reproduced below.

“22. In view of above discussion, we are unable to hold that service tax on service of renting of property is exclusively covered by Entry 49 List-II. As already observed, Entry 49 of List-II relates to tax on land and building and not any activity relating thereto. Income tax on income from property, wealth tax on capital value of assets including land and building and gift