NATION TAX MARKET

::आयुक्त (अपील्स) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), CENTRAL GST & EXCISE,
द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot – 360 001
Tele Fax No. 0281 – 2477952/2441142 Email: cexappealsrajkot@gmail.com

सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/191/BVR/2017	**BHV-EXCUS-000-JC-077-16-17**	**24.03.2017**

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

BHV-EXCUS-000-APP-125-2017-18

आदेश का दिनांक / Date of Order: **06.02.2018** जारी करने की तारीख / Date of issue: **09.02.2018**

कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by **Shri Kumar Santosh**, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम द्वारा उपरलिखित आरी मूल आदेश से सृजित /

Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham

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

1.M/s Mahasagar Travels Ltd. Kalwa Chowk Jayshree Talkies Road, Junagadh 362 001,

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

(A) सीमा शुल्क ,केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम ,1944 की धारा 35B के अन्तर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अन्तर्गत निम्नलिखित जगह की जा सकती है ।/

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) क्षेत्रीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए ।/

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका , द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- ३८००१६ को की जानी चाहिए ।/

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

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

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

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

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

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(i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दायर की गयी अपील, सेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न की (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपीलीय न्यायाधिकरण को अपील दायर करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी । /
The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST-7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) वित्त शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवैट जमा की ली गई गलत राशि
(iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होंगे।/
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.
Under Central Excise and Service Tax, 'Duty Demanded' shall include :
(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) **भारत सरकार को पुनरीक्षण आवेदन :**
Revision application to Government of India:
इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के संबंध में।/
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /
In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(iii) यदि उत्पाद शुल्क का भुगतान बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(iv) वित्तीय (सं. 2) अधिनियम, 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा उसके पश्चात किए गए अंतिम उत्पादों पर शुल्क के भुगतान के लिए जो इयूटी क्रेडिट इस अधिनियम एवं इसके नियमों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा पारित किए गए हैं।/
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए । उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /
The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-in-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए ।
जहाँ संलग्न रकम एक लाख रुपये या उससे कम है तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए ।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की सिवा चार्ट बनने से बचने के लिए सम्बन्धित अपीलीय न्यायाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है । /
In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended.

(F) वित्त शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। /
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं । /
For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in

:: ORDER - IN - APPEAL ::

M/s. Mahasagar Travels Ltd. Kalwa Chowk, Azad Chowk, Junagadh, (herein after referred to as "the appellant") filed this appeal against Order-In-Original No. BHV-EXCUS-000-JC-77-2016-17 dated 24.03.2017 (hereinafter referred to as "the impugned order") passed by the Joint Commissioner, Central Excise & Service Tax, Bhavnagar (hereinafter referred to as "the lower authority").

2. The brief facts of the case are that the appellant holding Service Tax Registration No.AABCM4403HSD001 dated 15.04.2010 engaged in providing Taxable Services under Category of "Rent-a-cab Scheme Operator Services, Tour Operator Services, Renting of Immovable Property Services" as defined under section 65 (105) of the Finance Act, 1994 but did not get registered under the category of "Courier Agency Service" and did not pay any service tax on income earned on "Luggage Income". The Jurisdictional Superintendent, Service Tax Junagadh made correspondence with the appellant calling for data vide repeated letters dated 29.10.2012, 07.12.2012, 12.02.2013, 12.03.2013 and 20.03.2013, however, the appellant did not come forward with the said information / data. Finally, the appellant furnished required information of income earned under the Head of 'Luggage Income' for the period from 2011-12 to 2014-15 on 21.12.2015 and calculation sheet dated 27.01.2016 in response to letter dated 14.12.2015 of Jurisdictional Superintendent, Service Tax Range, Junagadh revealing Service Tax on income received under the Head of 'Luggage Income" at Rs. 80,87,029/- for that services provided by the appellant in its buses for the Transportation of Documents, Goods or Articles.

3. Show Cause Notice No. V/15-166/Dem-ST/2015-16 dated 18.02.2016 was issued to the appellant demanding Service Tax of Rs. 80,87,029/- [Service Tax Rs. 78,51,485/- + Education Cess Rs. 1,57,030/- + Secondary & Higher Education Cess Rs. 78,514/-] under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as "the Act") alongwith interest under Section 75 of the Act and penalties under Section 76, 77, 78 and 77(1)(a) of the Act. The said Show Cause Notice was adjudicated by the lower adjudicating authority vide impugned order wherein he confirmed the demand of Service Tax of Rs. 80,87,029/- under Section 73(2) of the Act alongwith interest under Section 75 of the Act and imposed penalty of Rs. 10,000/- under Section 77 of the Act, penalty of Rs. 80,87,029/- under Section 78 of the Act, penalty of Rs. 10,000/-

under Section 77(1)(a) of the Act.

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

1. The services provided by them are classifiable under 'transport of goods by road' and not under 'courier agency' service as they are engaged in passenger transportation system in the buses. Beneath the bus, there is a space available where the baggage of the passengers are kept. However, the space is enough to carry any other goods also. In order to generate additional revenue, they also transport goods of various persons from one city to another city. However, neither they collect the goods from the customer from their home nor they deliver the goods to the customer's destination. It is the customer who comes to give the delivery of goods and the customer or its agent or customer's beneficiary only comes to collect the goods at destination. The goods that are carried being newspapers, mangoes, goods of businessman to be delivered which could be of varied type.

2. Even this activity of carrying goods from one place to another is also being carried on since many years by the buses run by Government also such as MSRTC, RSRTC, GSRTC.

3. At relevant point of time (upto 30.06.2012), as per section 65(50b) of the Finance Act, 1994, "goods transport agency" means any **person who** provides service in relation to transport of goods by road and issues consignment note, by whatever name called;

    a. Further, as per section 65(105)(zzp) of the Act, 'Any service provided or to be provided to any person, by a goods transport agency, in relation to transport of goods by road in a goods carriage;'

        i. As per section 65(50a) of the Finance Act, 1994, '"goods carriage" has the meaning assigned to it in clause (14) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);'

        ii. As per section 2(14) of the Motor Vehicles Act, 1988, '"goods carriage means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any

motor vehicle not so constructed or adapted when used for the carriage of goods."'

1. Thus, a goods carriage also includes any vehicle which is not so constructed or adapted for carriage of goods, when used for carriage of goods.

2. Thus, a goods carriage also includes any vehicle which is not so constructed or adapted for carriage of goods, when used for carriage of goods.

3. In the present case, the Your appellant has used its vehicle for transportation of goods belonging to others and also issued consignment note. The sample copy of consignment note issued is also submitted before your good honour.

b. They also relied upon below mentioned two definitions:

i. As per section 65(105)(zzzo) which taxes services pertaining to transport of passenger embarking in India for domestic journey or international journey reads as 'Any service provided or to be provided to any passenger, by an aircraft operator, in relation to scheduled or non-scheduled air transport of such passenger embarking in India for domestic journey or international journey;'

ii. Further, as per section 65(105)(zzn) which taxes transport of goods by aircraft which reads as 'Any service provided or to be provided to any person, by an aircraft operator, in relation to transport of goods by aircraft;'

iii. Thus, in the above case, the aircraft remains same and used for twin purpose, one for transportation of passenger as well as another for transportation of goods. As per section 65(3b) of the Finance Act, 1994, '"aircraft operator" means any person who provides the service of transport of goods or passengers by aircraft;'

iv. Similar to above, your appellant is also providing services of transportation of passengers as well as transportation of

goods in its vehicles. Just as for one air craft which carries passengers and goods, the two taxable categories are there, viz., "transport of passenger by aircraft" and "transport of goods by aircraft", similarly, in the present case, the bus remains same, which is used for twin purpose., viz., transport of passengers and transport of goods. As a reason, for transport of goods, it is taxed under the category of "Goods Transport Agency"

c. Thus, as per the provisions of the Motor Vehicles Act, 1988, the buses are also used for transportation of goods, hence, will be considered as goods carriage.

4. Further, they relied upon the provision of section 65(105)(zzzp) which taxes the taxable service of **'Transport of goods by Rail'** which reads as 'Any service provided or to be provided to any person, by any other person, in relation to transport of goods by rail, in any manner'

   a. Thus, there is a separate category of taxable service which taxes the services of transportation of goods by Rail.
   b. The below mentioned is the general procedure involved in transporation of goods by Rail. (Source: http://www.publishyourarticles.net/knowledge-hub/business-studies/what-are-the-procedure-of-transporting-goods-by-railway-transport/811/)
      i. **Selection of the Train**
      ii. **Packing of Goods:.**
      iii. **Dispatch Note:**
      iv. **Booking of goods:**
      v. **Dispatch of Railway receipt:**

   c. In transportation of goods through rail, the customer goes to the booking office and delivers the goods. When the goods are given, the railway authorities give the railway receipt. The railway authorities then transport the goods from origin to the destination. At the destination, the recipient collects the goods from the office of railway by showing the railway receipt. In this case, the activity is not taxed under the category of 'courier'
   d. Similarly, in transportation of goods in a vehicle which is the service provided by your appellant, the customer goes to the booking office and delivers the goods. When the goods are given, the consignment note is given to the customer. The goods are then transported the goods from origin to the destination in the space provided in the buses. At the destination, the recipient collects the goods from the

office of your appellant by showing the consignment note. Thus, this activity should also not be taxed under the category of 'Courier'; rather, it should be taxed under the category of 'transport of goods by road' only.

5. Like the way the goods transported through rail gets taxed under the category of 'transport of goods by rail'; transport of goods through water gets taxed under the category of **'Transport of Coastal Goods; and Goods transported through Inland water Service'**, transport of goods by air gets taxed under 'transport of goods by aircraft', the transport of goods through road should also be classified under the head 'transport of goods by road' as the operations performed under all the modes of transport remains more or less same except that the mode of transport is different.

6. In all the cases, whether it is transport of goods by air or by water or by rail, when the same is not taxed under the category of 'courier', though, the mode of transport i.e., aircraft or rail of ship / steamer is constructed in a manner that it carries both passengers and goods, still, when the goods are transported through aircraft or rail of ship / steamer, the same do not gets taxed under the category of courier.

7. Similarly, in the vehicles which are constructed to carry passengers and in that, goods are also transported, the same should be taxed under the category of 'transport of goods by road'

8. In the OIO it is observed that it covers an entity engaged in transportation of time-sensitive documents, goods and articles. As regards elements of door-to-door transportation contained in the said definition of 'Courier Agency Service' and relied upon judgment of the Hon'ble CESTAT, Bangalore in case of M/s Vijayanand Raodlines Ltd. V/s. CCE, Belagum [2005-TMI- 266- CESTAT, Bangalore].

    a. The above para discusses about the coverage of the activities of 'courier agency service' and explains the meaning of door to door transportation service. However, the activity of the appellant is entirely different. What it does is that it carries goods of the persons in the space of the buses run by it.

b. Further, the above pronouncement of the *Vijayanand* Roadlines Limited Versus CCE, Belgaum 2006 (1) S.T.R. 113 (Tri - Bang) = 2005 (8) TMI 409 - CESTAT has been dismissed by the Supreme Court as it did not find merit in the appeal 2006 (4) S.T.R. J115 (SC) = 2005 (11) TMI 474 - SUPREME COURT.

c. The Hon Supreme Court has dismissed the appeal as dismissal simplicitor. However, with due respect to the pronouncement of the Hon Tribunal and Hon Supreme Court, the aspect that the activity is classifiable under 'transport of goods by road' has not been discussed thereat, and by virtue of submission given above, the activity be classifiable under the category of 'transportation of goods by road'

9. As the activity is classifiable under the category of 'transport of goods by road', therefore, Sr. No 21(c) of Notification No 25/2012-ST dated 20.06.2012 exempts Services provided by a goods transport agency, by way of transport in a goods carriage of goods, where gross amount charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred fifty.

10. Further, abatement at 75% is also available by virtue of Notification No 26/2012-ST

11. As a reason, the service tax quantified and is attached as Annexure- __.

12. They relied on the provisions of section 73(3) of the Finance Act, 1994:

13. In the present case, by virtue of above, on merits, the service tax is not required to be paid. As the tax is not required to be paid, consequently, interest and penalty also is not required to be paid.

14. Further, as far as penalty under section 78 is concerned, then the same can be levied only when any circumstances exist so as to invoke the extended period for issuance of SCN. In the present case, as discussed in the earlier paragraphs that the your appellant is not guilty of fraud, collusion, willful misstatement, suppression, or contravention of any provision of the Finance Act, 1994 with an intent to evade the payment of tax. Thus, penalty under section 78 is not warranted in the present case.

15. The Notice is issued beyond limitation period. The notice covering period of five years is to be issued only when there is a fraud, collusion, suppression of facts, willful misstatements with intent to evade payment of service tax. If the assessee is not guilty of suppression of facts, collusion, willful misstatement of facts etc. extended period of limitation cannot be invoked- CC v. MMK Jewellers (2008) 225 ELT 3 SC). Further, the OIO also does not clearly states how there is evasion of tax. In this regard, CBEC has issued Circular No. 312/28/97-CX dated 22/04/1997 which states that The Supreme Court has ruled in the case of M/s Padmini Products, and Chemphar Drugs, etc. that mere non-declaration is not sufficient for invoking the longer period, but a positive misdeclaration is necessary.

16. In another Circular **No. 268/102/96-CX**CBEC has stated that it has been observed by the Board that CEGAT, in some cases, had held that show Cause Notice are time barred in as much as ingredients of suppression of fact, willful misstatement, etc. have either not been stated in the OIO or have not been substantiated as laid down by the Supreme court in the case of Commissioner of Central Excise vs. H.M.M. Ltd. -1995 (76) ELT 497.

17. It is also noteworthy that the Revenue has been fully aware about the above referred business an activity for which luggage income is earned by your appellant. Therefore, invocation of extended period of limitation is wholly illegal and unauthorized. As submitted here in above, the appeals against the said adjudication order are pending before the Appellate Tribunal, and a stay order has also been passed by the Appellate Tribunal in such appeal proceedings thereby protecting from recovery of amounts at service tax, interest and penalties in respect of the said case. These facts show that the Revenue officers were fully aware about business activities for which Luggage income is earned on regular basis. When a Show Cause Notice was issued to invoking larger period from April, 2006 to February, 2011, and such Show Cause Notice stands decided also by virtue of on adjudication order dated 23.01.2013 and appeal proceedings against the adjudication order are pending; how could the Revenue now allege suppression of facts or willful misstatement or any such ill-intention against us for the period from 2011-12 onwards. The principle laid down by the Hon'ble Supreme

Court in cases like Nizam Sugar Factory reported in 2006 (197) ELT 465,and also in other cases like Hyderabad Polymers (P) Ltd. -2004 (166) ELT 151 (SC), ECE industries 2004 (164) ELT 236 and P&B Pharmaceuticals Pvt. Ltd. - 2003 (I53) ELT 14 is squarely applicable in the present case.

It is held in these cases that invocation of the extended period of limitation was illegal when a Show Cause Notice was already served upon the assessee in past for the same subject matter. In view of this principle laid down by the Hon'ble Apex Court, the present Show Cause Notice is exfacie illegal because extended period of limitation could not have been invoked against us when a Show Cause Notice for the same subject matter has been issued to us in past; and the present case is also for the same subject matter.

For all these reasons, the invocation of extended period of limitation in this case is an action without jurisdiction, and therefore the present Show Cause Notice being boned by limitation deserves to be vacated along with all the proposals leveled there under in the interest of justice.

The law about invocation of extended period of limitation is well settled only in a case where the assessee knew that certain information was required to be disclosed and yet the assessee deliberately did not disclose such information, the case would be that of suppression of facts when the Excise officers called or certain information and the assessee did not disclose the some or deliberately disclosed wrong information, that would be a case of willful misstatement. Even in cases where certain information was not disclosed as the assessee was under a bonafide impression that it was not duty bound to disclose such information, it would not be a case of suppression of facts as held by the Hon'ble Supreme court in the landmark cases at Padmini products and Chemphar Drugs & Liniments reported in 1989(43) ELT 195 (SC) and 1989 (40) ELT 276(SC) respectively, continental Foundation Jt. venture v/s CCE Chandigarh reported in 2007 (216) ELT 177 (SC), Messrs Jaiprakash industries Ltd reported in 2002 (146) ELT 481 (SC), Hon' Supreme Court in Rainbow Industries v CCE (1994) (74) ELT 3 SC = AIR 1994 SC 2783,

ONGC v. CCE -1995 (79) ELT 117 (CEGAT), Tamilnadu Housing Board v. CCE -1995 Suppl (1) SCC 50 = 74 ELT 9 (SC)

18. Intention to evade payment of duty is not mere failure to pay duty. It must be something more, i.e., the assessee must be aware that the duty was leviable and he must deliberately avoid payment of duty. 'Evade' means defeat the provision of law of not paying duty. It is made more stringent by the use of the word 'intent'. In other words the assessee must deliberately avoid payment of duty which is payable in accordance with law. In Padmini Products v. Collector of Central Excise 1989 (43) E.L.T. 195, it was held that where there was scope for doubt whether case for duty was made out or not, the proviso to Section 11A of the Act would not be attracted.- Tamilnadu Housing Board v. CCE 1994 (74) E.L.T. 9 (SC) = 1994 (9) TMI 69.

19. Intention to evade duty is built into the expression 'fraud and collusion', but misstatement and suppression is qualified with the word 'willful'. Therefore, it is not correct to say that there can be suppression or misstatement of fact, which is not willful and yet constitutes a permissible ground for invoking the proviso to section 11A- Sarabhai M Chemicals v CCE 2005 179 ELT 3 (SC 3 member bench)8.

20. In the present case, all the details were available with the department. Thus, in the present case, invocation of extended period is not called for.

21. The proposal to impose penalty deserves to be vacated because there would be no justification in imposing even a taken penalty in this case. They have been under a genuine and bonafide impression that credit was admissible to us, and this impression has never been doubled by the Range and Divisional officers also in part. That when they were under the control of the service tax department and all the transactions were within the knowledge of the officers who had free access to our books of account and other documents, there is no justification in proposing penalties under sections 76, 77(1)(a), and 78 of the said Act.

The matter of penalty is governed by the principles as laid down by the Hon'ble Supreme Court in the land mark case of Messrs Hindustan Steel Limited reported in 1978 ELT (J159). This principle is applicable in this case, and accordingly no penalty can be imposed on us in this case.

The action of proposing penalties under Sections 76, 77, 77(1)(c) and 78 of the said Act is also an action without jurisdiction because no one could be penalized under different Sections for the same alleged offence. View of the fact that the Constitution of India also prohibits punishing a person more than once for the same offence, penalties under different Sections for the same offence is also a punishment more than once for the some alleged offence. The proposal in penalizing us for many times for the some alleged offence is therefore, illegal and liable to be set aside. Further, there is no violation of any nature committed by them. They have also not acted dishonestly or contumaciously and therefore, even a token penalty would not be justified.

22. The proposal regarding payment of interest on the service tax amount under section 75 of the Finance Act is also without any authority in law. In as much as the provision of section 75 is not attracted in the instant case.

5. Shri Rohan Thakkar, Chartered Accountant and Shri Amit Pande, Director of the appellant appeared for personal hearing and reiterated grounds of appeal; also submitted that they should not be treated as providing courier service as has been held in the case of Jetlite (India) Ltd. reported as 2011 (21) STR 80 (Tri.-Del.) but as transportation of goods by road; this Show Cause Notice is 2nd Show Cause Notice on same issue and earlier issued Show Cause Notice, decided by Commissioner, is pending before CESTAT.

5.1 The appellant vide their letter dated 18.12.2017 filed additional submission pursuant to personal hearing dated 12.12.2017 wherein they relied upon section 2(14) of the Motor Vehicles Act, 1988 and many other sections and reiterated the grounds of appeal.

FINDINGS:

6. I have carefully gone through the impugned order, appeal memorandum and written as well as oral submissions made by the appellant. The issue to be decided in the present appeal is whether the appellant is liable to pay Service Tax on courier agency service or not and whether they are liable to pay interest and liable to penalty under Section 76, 77, 78 and 77(1)(a) of the act.

7. To decide the taxability, the definition of courier agency service and

"Taxable Service" are required to be looked first and the same is re-produced below:

> Courier Agency:- As per Section 65(33) of the Finance Act, 1994 'courier agency' to mean -
>
> > *"any person engaged in the door-to-door transportation of time sensitive documents, goods or articles utilizing the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles".*
>
> "Taxable Service" :- As per Section 65(105)(f) of the Finance Act, 1994 means -
>
> > "any service provided or to be provided to any person, by courier agency in relation to door-to-door transportation of time-sensitive documents, goods or articles";

7.1 The above definition of Courier Agency provides for any person engaged in the door-to-door transportation of time sensitive documents, goods or articles utilizing the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles. In the present case, the appellant is engaged in plying their buses from one place to other i.e. point to point transportation of passengers through their buses and also engaged themselves in activity of transportation of big and small luggage, documents and papers in the buses available space of the owned and plied by them and charged amount for such activity. It is not disputed that the goods or documents were booked by the customers by visiting the offices of the appellant and the recipient persons visited the office of the appellant for taking delivery of the goods at destination place. Hence, the appellant's plea is that their activity is not door-to-door and therefore, not covered by "Courier Agency Service".

7.2 The activity of the appellant transporting time-sensitive documents, goods or articles utilising the services of a person either directly or indirectly to carry or accompany such documents, goods or articles is not denied. The appellants' only contention is that they are not going to the doors of the customers and want to restrict the term 'door-to-door' transportation to mean that it excludes the cases where the customer comes to their office. Such an interpretation is fallacious. When the services of a person is utilised either directly or indirectly inasmuch as the customers go to the courier agent's office and delivers his documents, goods or articles will also be covered door to door transportation in as much as they maintain mobile number/ contact no. of sender and also of receiver to contact them as and when required Courier Agencies undertake the service of transportation of goods and documents from

one place to another ensuring delivery at the desired place within given time frame. Even known Courier Agencies are not required to collect the goods/ documents from door to door. It is not acceptable reason for exempting services where the consigners go to the office of the courier to hand over the documents/goods from the ambit of Service Tax. Even if the consigners go to the office of the courier for depositing the documents/goods, the same is required to be considered door-to-door delivery. Therefore, door-to-door transportation must be interpreted to include the cases where any consigner or consignee has to go to the courier office for depositing the documents and taking delivery of the same. The restrictive meaning being sought to be attached with Courier Agency inasmuch as the agent collecting documents from the customers alone is covered is not tenable/acceptable. Therefore, even though the appellant does not collect the goods, documents, luggage etc. from the customers' door and do not deliver to the customers at their door place, the activity carried out by them will be covered within the ambit of "Courier Agency Service".

7.3 My above views get support from the judgment of the CESTAT, Bangalore in the case of Vijayanand Roadlines Limited reported as 2006 (1) S.T.R. 113 (Tri.-Bang.) wherein the Hon'ble CESTAT held that

> **"5.** In so far as the claim of the appellants for abatement of duty paid in respect of the customers having come and delivered the documents to their door and their contention that the same is not covered by the definition of Courier Service, is rejected. The definition of 'courier service' in Para 27 of the Act reads as follows :
>
> > "Courier agency" means a commercial concern engaged in the door-to-door transportation of time-sensitive documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles".
>
> The violation to the definition cannot be made in a manner so as to interpret in a way that would make the definition otiose and redundant. The activity of the appellant transporting time-sensitive documents, goods or articles utilising the services of a person either directly or indirectly to carry or accompany such documents, goods or articles is not denied. The appellants' only contention is that they are not going to the door of the customer and want to restrict the term 'door-to-door' transportation to mean that it excludes the cases where the customer comes to their door. Such an interpretation is not possible. When the services of a person is utilised either directly or indirectly inasmuch as the customer goes to the courier agent's office and delivers his documents, goods or articles, it is also required to be considered as covered under the definition of "Courier Agency". The findings given by the Commissioner (Appeals) on this point is reproduced herein below :
>
> > "Courier Agencies undertake the service of transportation of goods and documents from one place to another where time sensitivity and ensuring delivery at the door is the prime criteria. Only in respect of very big customers, the courier agencies collect the documents from the premises of the customers and deliver to the consignees. They do not collect the documents at the door of every consigner. I cannot think of any acceptable reason for exempting services where the consigners go to the office of the courier to deposit the documents from the ambit of Service Tax. Such a distinction in courier services is very much repugnant to common sense. In my view even if the consigner goes to the office of the courier for depositing the documents, the same should be considered door-to-door delivery. I also do not find any difference in tariff rates on account of the fact that the documents and goods are not collected from the premises

of the consigner and delivered in the premises of the consignees. Therefore, door-to-door transportation should be interpreted to include the cases where consigners and consignees go to the courier office for depositing the documents and taking delivery of the same."

6. The above finding is concurred to by this Bench. The impugned order is modified to the extent indicated only. Otherwise, the point raised with regard to the restrictive meaning to be given to Courier Agency inasmuch as the agent collecting documents from the customers alone is covered, is rejected. The appeal is disposed of in the above terms."

7.4 The Hon'ble CESTAT has set aside the demand from February, 2001 on extended time issue, however, Tribunal has upheld the taxability of the activity carried out by the appellant as "Courier Agency Service" even though the appellant was not collecting and not delivering the time sensitive documents door-to-door. The above judgment of Hon'ble CESTAT Bangalore was upheld by the Hon'ble Apex court as reported at 2006 (4) S.T.R. J115 (S.C.) and dismissed the appeal filed by the appellant by confirming the view that when the services of a person are utilised either directly or indirectly inasmuch as the customer goes to the courier agent's office and delivers his documents, goods or articles, such services also covered under the definition of courier agency.

7.5 The appellant in their appeal memorandum, by discussing the above mentioned judgments have argued that the activity carried out by them is different as they carry goods in the available space of the buses run by them. I find that the arguments advanced by the appellant are misconceived in as much as Hon'ble CESTAT Bangalore has upheld the demand prior to February, 2001 and the demand from February, 2001 was set aside for the reason that demand without show cause notice cannot be allowed to be sustained but the taxability was upheld by the Hon'ble CESTAT, Bangalore. The appeal filed by M/s. Vijayanand Roadlines before the Hon'ble Supreme Court against this order was dismissed. Thus, I hold that the activity carried out by the appellant merits classification under "Courier Agency Service" and hence, I uphold the impugned order in this regard.

7.6 The appellant has argued that same activity is carried out by the Government bodie such as MSTRC, RSRTC, GSRTC while running the buses and also by Indian Railways and airlines. I find that the activity carried out by the Government run buses is to transport passengers only. With regard to transport of documents/ goods, they have engaged private agencies who pay service tax under category of courier agency service. The services provided by Indian

Railways is classifiable under Section 65(105)(zzzp) for transport of goods by rail, which do not cover the service of courier agency service. The services provided by airlines are covered under transport of goods by air service as defined under Section 65(105)(zzn), therefore, the arguments made by the appellant are not relevant in this case and are devoid of any merits.

7.7 Another argument made by the appellant is that their activity merits classification under "goods transport agency" service and not under "courier agency service" and for this, they relied on the provisions of Motor Vehicles Act, 1988. The definitions of "Courier Agency Service" as well as "Transport of Goods by Road (GTA) Service", are about transportation of goods, however, GTA service is specific and confines transportation of goods by road only where as there is no such condition for "Courier Agency Service". There are two conditions to qualify the activity as "Courier Agency Service" - (1) door-to-door transportation of documents, goods or articles; and (2) time sensitiveness of documents, goods. The time-sensitivity of documents, goods or articles is essence for qualifying the activity as "Courier Agency Service". The Good Transport Agency usually transport the goods through various places en-route from point of origin to point of destination and timely delivery of the goods. The appellant is engaged in point-to-point transportation of goods, documents within time frame says within a day or two in a fixed time frame and hence Courier Agency Service and not GTA service.

8. The appellant further contended that SCN has been issued beyond normal period of limitation and hence is time-barred since the involved Show Cause Notice is second Show Cause Notice; also because they have declared their luggage income in their Books of Accounts i.e. balance sheet and profit & loss account. It is on record that earlier an offence case was booked against the appellant for recovery of Service Tax on Luggage Income also under "Courier Agency Service" and Show Cause Notice demanding Service Tax was confirmed by the department. It is a fact that the appellant had not obtained registration of Service Tax under the category of "Courier Agency Service" and did not file Service Tax Return for Courier Agency Service. The jurisdictional Superintendent, Service Tax Range, Junagadh had requested the appellant vide letters dated 29.10.2012, 07.12.2012, 12.02.2013, 12.03.2013 and 20.03.2013 to provide details of Luggage Income so that demand of Service Tax can be issued within normal time. However, the appellant withheld such information

and provided the information after 3 years on 21.12.2015. This is nothing but suppression of facts with intent to evade payment of Service Tax on such income. It is also on record that even after repeatedly and specifically asked for to fulfill statutory obligation of obtaining registration in respect of the said service and pay Service Tax on Courier Agency Service, the appellant did not pay any heed. There was/is an obligation on part of the appellant to provide called for information but they took 3 years time to submit after 5 letter/reminder. In view of such facts, I have no option but to hold it an act of suppression of facts with intent to evade payment of Service Tax.

9. CBEC vide Circular No. 1053/02/2017-CX dated 10.03.2017 issued from F.No. 96/1/2017-CX.I, having subject "Master Circular on Show Cause Notice, Adjudication and Recovery", has clarified the matter at para 3.7 as under:

"3.7 Second SCN invoking extended period: Issuance of a second SCN invoking extended period after the first SCN invoking extended period of time has been issued is legally not tenable. However, the second SCN, if issued would also need to establish the ingredients required to invoke extended period independently. For example, in cases where clearances are not reported by the assessee in the periodic return, second SCN invoking extended period is quite logical whereas in cases of wilful mis-statement regarding the clearances made under appropriate invoice and recorded in the periodic returns, second SCN invoking extended period would be difficult to sustain as the department comes in possession of all the facts after the time of first SCN."

9.1 In the case on hand, the appellant neither obtained Service Tax registration under "Courier Agency Service" nor filed S.T.-3 returns for the said service. Even after being asked for by repeated letters, they withheld the information for a period of more than 3 years and lastly in the year 2015, they provided the information to the Department. Therefore, the invocation of extended period is very logical and has been rightly invoked by the lower adjudicating authority and the orders/judgments relied upon by the appellant are not relevant looking to the facts of present case.

9.2 My above views get support from the following judgments of the CESTAT/ High Court:

(i) **LEAR AUTOMOTIVE INDIA PVT. LTD. reported as 2012 (286) E.L.T. 558 (Tri. - Mumbai) has held that:**

"**19.1** In the case of *CCE* v. *Greaves Cotton Ltd.* - 2008 (225) E.L.T. 198 (Bom.), the Hon'ble Bombay High Court has held that the Cenvat credit taken on inputs found short and finally written off from the books of accounts is required to be reversed. Relying upon this decision of the

Hon'ble High Court, the ld. Member (J) has already held that the demand raised on this account is sustainable. I agree on this point. However, in so far as the extended period of limitation is concerned, from the facts of this case, I find that the appellant did not disclose the fact to the department that the inputs found short on physical verification were ultimately written off from the books of accounts. The department came to know only when the officers of DGCEI visited the factory premises of the appellant in Feb. 2004 but for this, it would not have been possible for the department to know that the appellant had not reversed the Cenvat credit taken on inputs written off from the books of accounts. This is nothing but suppression of facts. I, therefore, hold that this is a fit case for invocation of extended period of limitation."

31. The third and last issue for consideration is whether extended period is invocable for the demand of Cenvat credit taken in respect of inputs found short but ultimately written off in the books of accounts. On merits, both the Members have held that the credit is required to be reversed. The difference is only with respect to invocability of extended period of time. The appellant conducts physical stock taking annually before the statutory auditors and thereafter adjustment of shortages and excesses are carried out and then reflected in the books of accounts. Thereafter the raw materials found short are written off in the books of accounts. While doing so, the appellant has not reversed the Cenvat credit taken on the raw materials found short. It is not the case of the appellant that they have involved the central excise staff in the physical stock taking nor have they intimated the shortages noticed to the excise department. As per C.B.E. & C. Circular dated 22-2-1995, when the assessee writes off the materials in their books of accounts, *it is obligatory on the part of the assessees to straight away reverse the Modvat credit taken under intimation to the Range Officers concerned.* This position was reiterated in the circular dated 16-7-2002. Such instructions/circulars are brought to the notice of the trade by way of trade notices. Under Section 37(2)(xx) of Central Excise Act, 1944, the C.B.E. & C. and the Commissioner of Central Excise are empowered to issue written instructions for enforcement of the provisions of the Act and the rules made thereunder. Such instructions have statutory force and have to complied with by the assessees. In the instant case, the appellant has not complied with instructions contained in C.B.E. & C. Circular referred to supra nor have they informed the central excise department of the discrepancies noticed during stock taking and their writing off the same in the books of accounts. This position has been clearly admitted by the Excise Executive of the appellant firm in his statement dated 11-2-2004. This non-compliance to the instructions and withholding of information from the department tantamounts to suppression of facts. In a tax regime which places high reliance on voluntary compliance, the onus on the part of the assessee is quite high and failure to comply with the law can not be taken lightly. *Therefore, I am of the view that the extended period of time has been correctly invoked to demand ineligible Cenvat credit taken in respect of inputs found short and which have been written off in the books of accounts.*

(ii) **In case of SUNDARAM CLAYTON LTD. reported as 2000 (117) E.L.T. 116 (Tribunal), the Hon'ble Tribunal ruled that** *"(e) On limitation aspect, in view of their failure to provide the relevant information to the department, during the course of the enquiry and in view of their letter dated 13-9-1989, we cannot subscribe to the view that the appellants could have harboured any bonafide belief on the non-excisability of the goods."*

(iii) In case of NOBLE DETECTIVE & SECURITY SERVICE P. LTD. as reported as 2014 (34) S.T.R. 289 (Tri. - Ahmd.), the Hon'ble CESTAT has held that:

"4. Heard both sides and perused the case records. The case was agitated by the appellant only on the issue that demand in the present proceedings is time-barred. First argument taken by the appellant is that their balance sheets are public documents as being filed with the Registrar of Companies under Companies Act and extended period will not be applicable. It is observed from the judgment of Bangalore Bench in the case of *CCE, Calicut* v. *Steel Industries Kerala Ltd.* (supra) that this issue is no more *res integra*. In Para 3 of this decision, after relying upon the case law of *M/s. Maruti Udyog Ltd.* v. *CCE, New Delhi* [2001 (134) E.L.T. 269], the following was held :

> "We find that in the case of *Maruti Udyog Ltd.* v. *CCE, New Delhi*, 2001 (134) E.L.T. 269, the Tribunal has upheld the invocation of the extended period of limitation when the assessees did not declare waste and scrap of iron and steel and aluminium and availment of credit thereon either in their classification list or Modvat declaration or in the statutory records. The Tribunal held that the theory of universal knowledge cannot be attributed to the department in the absence of any declaration. In the light of this decision, we agree with the learned DR that the demand could not have been held to be barred by limitation and accordingly set aside the finding of the Commissioner (Appeals). Since no decision on merits has been recorded by the lower authority, we set aside the impugned order and remand the case for fresh decision on merits to the Commissioner (Appeals) who shall pass fresh orders after extending a reasonable opportunity to the assessees of being heard in their defence."

4.1 In view of the above position of law appellant's argument, that demand is time-barred, as

balance sheets were regularly filed with Registrar of Companies is required to be rejected and detailed findings of Commr (A) in Paras 7 & 8 of his OIA, dated 27-2-2009/5-3-2009 are required to be upheld.

5. On the issue of invocation of extended period in the second show cause notice, it may be mentioned that limitation issue is a mixed question of facts and law. This appeal has to be seen from the facts of with the present case. Once on an issue a show cause notice was issued to the appellant than it was also appellant's duty to inform the Revenue that in spite of earlier show cause notice appellant continued to follow the earlier practice of declaring incorrect value of services in their ST-3 return vis-a-vis balance sheets. Revenue cannot imagine that the appellant will continue to follow a wrong practice in spite of earlier show cause notice issued to them. In view of the above facts and circumstances being different, the case laws relied upon by the appellant will not be applicable to the present proceedings. These views are also fortified by the ratio of decision given by CESTAT [Chennai] in the case of *M/s. Robot Detective & Security Agency v. CCE, Chennai* (supra) relied upon by learned AR to the effect that extended period can be invoked in a subsequent show cause notice."

9.3 In view of above, I hold that extended period has been rightly invoked against the appellant and Service Tax is correctly demanded for extended time. Since Service Tax is recoverable on the ground of taxability and also on suppression of the facts the levy of interest and imposition of penalty on the appellant are justified.

10. In view of above facts and legal position, I uphold the impugned order and reject the appeal.

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

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

6.12.2018

(कुमार संतोष)
आयुक्त (अपील्स)

By R.P.A.D.

To

M/s. Mahasagar Travels Ltd. Kalwa Chowk, Azad Chowk, Junagadh	मेसर्स महासागर ट्रावेल्स लिमिटेड, कालवा चौक, आजाद चौक, जूनागढ

Copy for information and necessary action to:

1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad for favour of kind information.
2) The Commissioner, GST & Central Excise Commissionerate, Bhavnagar.
3) The Assistant Commissioner, GST & Central Excise, Division, Junagadh.
4) The Range Superintendent, GST & Central Excise, Junagadh.
5) Guard File.