::आयुक्त (अपील्स) का कार्यालय,वस्तु एवं सेवा करऔर केन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,
द्वितीय तल,जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot – 360 001
Tele Fax No. 0281 – 2477952/2441142Email: commrappl3-cexamd@nic.in

सत्यमेव जयते

रजिस्टर्डडाकए.डी. द्वारा :- DIN-20220364SX000041994F

क	अपील / फाइलसंख्या/ Appeal /File No.	मूलआदेशसं / OIONo.	दिनांक/ Date
	V2/26/GDM/2021	24/GST/AC/2020-21	05/02/2021

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

KCH-EXCUS-000-APP-273-2021-22

आदेश का दिनांक / Date of Order: **28.02.2022** जारी करने की तारीख / Date of issue: **02.03.2022**

श्रीअखिलेश कुमार, आयुक्त (अपील्स), राजकोट द्वारा पारित/
Passed by Shri Akhilesh Kumar,Commissioner (Appeals),Rajkot.

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

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

M/s MGM Shipping Solutions, DBZ South 55, Above Unique Sales, Gandhidham(Kutch)-370201 .

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

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

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

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय 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 असावा अहमदाबाद- ३८००१६को की जानी चाहिए ।/

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016in 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 अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए । इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग ,ब्याज 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 क्रमश: 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 रजिस्टार 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 dutydemand/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,1994की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5में 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,ब्याज 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 क्रमश: 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 रजिस्टार 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/-.

(i) वित्त अधिनियम,1994की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। /
The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in 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 Commissionerauthorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" मे निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं॰ 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं 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 कोपुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलो में,केंद्रीय उत्पाद शुल्क अधिनियम,1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई,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 मामले में।/
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

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

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

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं॰ 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयावधि पर या बाद में पारित किए गए है।/
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील)नियमावली,2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही कुन्द्रीय 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।
जैहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 1000-/ का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है। / In case,if the order covers variousnumbers 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 filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित 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) सीमा 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. MGM Shipping Solutions, Gandhidham (hereinafter referred to as "Appellant") has filed Appeal No. V2/26/GDM/2021 against Order-in-Original No. 24/GST/AC/2020-21 dated 5.2.2021 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central GST, Gandhidham (Urban) Division (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that the Appellant was engaged in providing 'Clearing and Forwarding Agent Service', 'Custom House Agent Service' etc. and was registered with Service Tax Department having Registration No. AAPFM0063QST001. During search carried out by the Officers of Preventive Branch, CGST, Gandhidham at the premises of M/s. MAS Marine Services (India) Pvt Ltd on 6.2.2019, it was revealed that the Appellant had provided various taxable services and had charged and collected service tax from their clients during the period from F.Y. 2014-15 to June, 2017 but had not deposited / short deposited the same in Government exchequer. It was further revealed that they had failed to file ST-3 Returns for the period from October, 2014 - March, 2015 and failed to discharge service tax liability. It appeared that the Appellant had evaded service tax totally amounting to Rs. 18,59,672/-. The Appellant had deposited service tax totally amounting to Rs. 14,01,080/- during the period from 13.2.2015 to 6.6.2017.

2.1 On culmination of investigation, Show Cause Notice No. SCN/2/CEP/Kutch/2020-21 dated 21.4.2020 was issued to the Appellant calling them to show cause as to why service tax amounting to Rs. 18,59,672/- should not be demanded and recovered from them under proviso to sub-Section (1) of Section 73 of the Finance Act,1994 (hereinafter referred to as 'Act') along with interest under Section 75 of the Act. It was also proposed to appropriate service tax amounting to Rs. 14,01,080/- deposited during material time against total service tax liability. The notice also proposed imposition of penalty under Sections 70, 76, 77 and 78 of the Act.

2.2 The above Show Cause Notice was adjudicated by the adjudicating authority vide the impugned order wherein he confirmed demand of service tax amounting to Rs. 18,59,672/- under proviso to Section 73(1) of the Act, along with interest under Section 75 of the Act and appropriated service tax amount of

Rs. 14,01,080/- deposited during material time against confirmed demand. The adjudicating authority imposed penalty of Rs. 18,59,672/- under Section 78 of the Act and Rs. 49,000/- under Section 70(1) of the Act read with Rule 7 of the Service Tax Rules, 1994 and Rs. 10,000/- under Section 77 of the Act.

3. Being aggrieved, the Appellant preferred the present appeal contending that the adjudicating authority erred in confirming service tax demand of Rs. 18,59,672/- under Section 73(1) of the Act and also erred in imposing penalty under Sections 70,77 and 78 of the Act.

4. Hearing in the matter was scheduled in virtual mode through video conferencing on 28.1.2022. Shri Abhishek Doshi, Chartered Accountant, appeared on behalf of the Appellant. He reiterated the submissions made in appeal memorandum as well as additional written submission made as part of hearing containing quantification of liability.

4.1 In additional written submission filed at the time of hearing, it has, *inter alia*, been contended that,

(i) They do not dispute the entire demand but the demand has been wrongly calculated. They had already deposited Rs. 14,00,610/- paid in cash and Rs. 470/- from Cenvat credit account during the period from 13.2.2015 to 6.6.2017 totaling Rs. 14,01,080/- at material time before search, making net demand of Rs. 4,58,592/-.

(ii) The show cause notice issued on 21.4.2020 by invoking extended period of limitation for the period 2014-15 to 2016-17 is barred by limitation. The show cause notice does not have any evidence to show that they had suppressed any information with an intention to evade payment of service tax. The show cause notice has just mentioned that assessee have not disclosed the facts at any time without any support. When everything was available on records, the allegation of suppression etc. cannot be made and extended period should not be invoked and relied upon following case laws :

(a) Amco Batteries Ltd. -2003-TIOL-50-SC CX
(b) Padmini Products - 2002-TIOL-289-SC-CX
(c) Jai Prakash Industries Ltd. - 2002-TIOL-633-SC-CX
(d) Sunil Metal Corporation - 2009-TIOL-681-CESTAT-AHM

(iii) They were registered with Department since long and regular in payment of service tax. They could not pay the service tax for certain period due to liquidity issue. They had no intention to evade the payment of taxes. The show cause notice has not brought on record any evidence to the effect that the Appellant had deliberately suppressed the facts or mis-stated anything in order to intentionally evade payment of tax. Therefore, no penalty should be imposed under Sections 70, 77 or 78 of the act and relied upon following case laws:

(a) Hindustan Steel Ltd. vs. State o Orissa 002-TIOL-148-SC-CT-LB
(b) M/s. Motorworld and others 2012-TIOL-418-HC KAR-ST]
(c) Housing & Development Corp. Ltd.-2011-TIOL-1606-CESTAT-AHM]

(iv) That total service tax of Rs. 18,59,672/- demanded is their gross liability and they had already paid Rs. 14,01,080/- voluntarily much before the search. Hence, no penalty can be imposed upon them under Section 78 on such service tax amount which was already paid before the search.

5. I have carefully gone through the facts of the case, the impugned order, the grounds raised in Appeal Memorandum and additional written submission as well as oral submission made at the time of hearing. The issue to be decided in the present appeal is whether the impugned order confirming service tax demand of Rs. 18,59,672/- under proviso to Section 73(1) of the Act, along with interest under Section 75 and imposing penalty under Sections 70, 77 and 78 of the Act is correct, legal and proper or not.

6. On perusal of the records, I find that an offence case was booked against the Appellant for evasion of service tax. Investigation carried out by the officers of Preventive Branch, CGST, Gandhidham revealed that the Appellant had rendered various taxable services and had charged and collected service tax from their clients during the period from F.Y. 2014-15 to June, 2017 but had not deposited / short deposited service tax in Government exchequer. The Appellant had failed to file ST-3 Returns for the period of October, 2014 - March, 2015. The Show Cause Notice was issued to the Appellant for demanding service tax totally amounting to Rs. 18,59,672/-. The adjudicating authority confirmed service tax demand of Rs. 18,59,672/- under Section 73(1) of the Act along with interest under Section 75 and imposed penalty under Sections 70,77 and 78 of the Act.

7. I find that the Appellant has not disputed the charge that they had not deposited service tax charged and collected from their service recipients into Government Exchequer and that they had failed to file ST-3 Returns for the period from October, 2014 - March, 2015. They have contested that the demand is calculated on higher side by erroneously including Rs. 14,00,610/- paid in cash and Rs. 470/- paid from Cenvat credit account during the period from 13.2.2015 to 6.6.2017 before search. I find that the Appellant had paid Rs. 14,01,080/- during the period from 13.2.2015 to 6.6.2017 through Cash/ Cenvat credit account, as detailed at Para 25 of the impugned order. The search was carried out on 6.2.2019. Hence, service tax payment of Rs. 14,01,080/- was made by the Appellant prior to search and such tax amount should not form part of service tax demand. I, therefore, set aside confirmation of service tax demand of Rs. 14,01,080/- and uphold the remaining service tax demand of Rs. 4,58,592/- under Section 73 of the Act along with interest under Section 75 of the Act. As regards interest on said amount of Rs. 14,01,080/-, it is not forthcoming from the impugned order whether the Appellant had paid service tax during material period within prescribed time limit or not. For this limited purpose, the matter is remanded to the adjudicating authority to verify and quantify interest, if there was delay in payment of service tax on said amount of Rs. 14,01,080/- deposited during the period from 13.2.2015 to 6.6.2017. The Appellant is also directed to produce information/ documents as and when called upon by the adjudicating authority.

8. The Appellant has contested the invocation of extended period of limitation on the grounds that the Show Cause Notice issued on 21.4.2020 by invoking extended period of limitation for the period from F.Y. 2014-15 to F.Y. 2016-17 is barred by limitation. The Show Cause Notice does not have any evidence to show that they had suppressed any information with an intention to evade payment of service tax. The Show Cause Notice has just mentioned that assessee have not disclosed the facts at any time without any support. When everything was available on records, the allegation of suppression etc. cannot be made and extended period should not be invoked. I find that the Appellant in the present case had charged and collected service tax from their clients but did not deposit the same in Government Exchequer during the period from F.Y. 2014-15 to June, 2017, which was unearthed during investigation carried out against them. The Appellant had also not filed ST-3 return for the period from October, 2014 - March, 15. Thus, this is a clear case of suppression of facts with

intent to evade payment of service tax. Considering the facts of the case, I am of the opinion that the adjudicating authority was justified in invoking extended period of limitation on the grounds of suppression of facts.

9. As regards penalty imposed under Section 78 of the Act, the Appellant has pleaded that the Show Cause Notice has not brought on record any evidence to the effect that they had deliberately suppressed the facts or mis-stated anything in order to intentionally evade payment of tax. The Appellant further pleaded that the tax liability was shown in the returns and part payment was made. I find that the Appellant was registered with Service Tax Department. They had during the relevant period charged and collected service tax from their clients but did not deposit the same in Government exchequer, which was unearthed during investigation carried out against them. It is on record that they had also failed to file ST-3 Return for the period from October, 2014 -March, 2015. Since invocation of extended period of limitation on the grounds of suppression of facts is upheld by me in paras *supra*, penalty under Section 78 of the Act is mandatory, as has been held by the Hon'ble Supreme Court in the case of Rajasthan Spinning & Weaving Mills reported as 2009 (238) E.L.T. 3 (S.C.), wherein it is held that when there are ingredients for invoking extended period of limitation for demand of duty, imposition of penalty under Section 11AC is mandatory. The ratio of the said judgment applies to the facts of the present case. I, therefore, hold that the Appellant was liable to penalty under Section 78 of the Act.

10. The Appellant has contended that total service tax of Rs. 18,59,672/- demanded is their gross liability and they had already paid Rs. 14,01,080/- voluntarily much before the search. Hence, no penalty can be imposed upon them under Section 78 on such service tax amount which was already paid before the search. I have already held in para supra that service tax payment of Rs. 14,01,080/- was made by the Appellant prior to search and such tax amount cannot be part of service tax demand and consequently no penalty can be imposed under Section 78 of the Act. I, therefore, set aside penalty to the extent of Rs. 14,01,080/- imposed under Section 78 of the Act.

11. Regarding penalty of Rs. 10,000/- imposed under Section 77 of the Act, I find that the adjudicating authority has imposed penalty on the grounds that the Appellant had failed to obtain registration under 'Manpower Recruitment or

Supply Agency Service' and 'Clearing and Forwarding Agent Service' in accordance with Section 69 of the Act read with Rule 4 of the Service Tax Rules, 1994 and for not following service tax law. I concur with the findings of the adjudicating authority and uphold imposition of penalty of Rs. 10,000/- under Section 77 of the Act.

12. Regarding penalty of Rs. 49,000/- imposed under Section 70(1) of the Act read with Rule 7 of the Service Tax Rules, 1994, I find that the adjudicating authority has imposed penalty for late filing of ST-3 Returns for the period from F.Y. 2015-16, F.Y. 2016-17 and April-June, 2017 and for non-filing of ST-3 Return for the period from October-March, 2014-15. I concur with the findings of the adjudicating authority and uphold imposition of penalty of Rs. 49,000/- under Section 70 of the Act.

13. In view of above, I partially allow the appeal and set aside the impugned order to the extent of confirmation of demand of Rs. 14,01,080/- under Section 73 of the Act and imposition of penalty of Rs. 14,01,080/- under Section 78 of the Act. The matter relating to quantification of interest on service tax of Rs. 14,01,080/- is remanded to the adjudicating authority for *de novo* adjudication. The remaining portion of impugned order is upheld.

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

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

सत्यापित,

विपुल शाह

(AKHILESH KUMAR)
Commissioner (Appeals)

28th February 2022

By RPAD

To,	सेवा में,
M/s. MGM Shipping Solutions, DBZ South 55, Above Unique Sales, Gandhidham.	मैसर्स एमजीएम शिपिंग सोलूसन, डीबीजेड साउथ 55, यूनिक सेल के ऊपर, गांधीधाम।

प्रतिलिपि :-

1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गांधीधाम आयुक्तालय, गांधीधाम को आवश्यक कार्यवाही हेतु।
3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गांधीधाम (शहरी) मंडल को आवश्यक कार्यवाही हेतु।
4) गार्ड फ़ाइल।