

::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::

O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE

द्वितीय तल, जी एस टी भवन / 2<sup>nd</sup> Floor, GST Bhavan

रेस कोर्स रिंग रोड / Race Course Ring Road

राजकोट / Rajkot - 360 001

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सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा:-

DIN-20220464SX0000888F0E

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/42 /GDM /2021	23/GST/AC/2020-21	27-01-2021

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

**KCH-EXCUS-000-APP-003-2022**

आदेश का दिनांक / Date of Order:	जारी करने की तारीख / Date of issue:
27.04.2022	28.04.2022

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

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

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

M/s. Swift Logistics Solutions, Office No. 203-204, Trade Centre, Plot No. 46, Sector-8, Kutch, Gandhidham - 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 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:-

(ii) 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.

(iii) उपरोक्त परिच्छेद 1(a) में बताए गए अपील के अलावा शेष सभी अपील सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- 380016 को की जानी चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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 अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक 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.5,000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक 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 fee of Rs. 1,000/-, Rs.5,000/-, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is upto 5 Lakhs or less, Rs.5,000/- 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/-



- (ii) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज 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 करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। /

The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

- (iii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जूर्मना विवादित है, या जूर्मना, जब केवल जूर्मना विवादित है, का भुगतान किया जाए, बशर्त 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 हैं

- (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

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा। /

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,

Under Central Excise and Service Tax, "Duty Demanded" shall include :

- (i) amount determined under Section 11 D;  
(ii) amount of erroneous Cenvat Credit taken;  
(iii) amount payable under Rule 6 of the Cenvat Credit Rules

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

- (C) भारत सरकार को पुनरीक्षण आवेदन :  
Revision application to Government of India:  
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन 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 मामले में। /  
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

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

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

- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इयूटी क्रेडिट 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 समायादिधि पर या बाद में 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 उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संश्लेषण 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 हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।  
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

- (D) यदि 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 न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various umbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-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 (कर्वे विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की और 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.

अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbec.gov.in](http://www.cbec.gov.in) को देख सकते हैं। /  
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](http://www.cbec.gov.in).



**:: ORDER-IN-APPEAL ::**

M/s. Swift Logyship Solutions, Gandhidham (hereinafter referred to as "Appellant") has filed Appeal No. V2/42/GDM/2021 against Order-in-Original No. 23/GST/AC/2020-21 dated 27.1.2021 (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' and 'Goods Transport Agency Service' and was registered with Service Tax Department having Registration No. ACWFS5946DSD001. Based upon intelligence that the Appellant was evading payment of service tax, inquiry was initiated against the Appellant and Officers of Preventive Branch, CGST, Gandhidham visited the office premises of the Appellant on 18.1.2019. On scrutiny of documents, 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. 2016-17 to June, 2017 but had not deposited / short deposited the same in Government Exchequer. It was further revealed that they had not filed ST-3 returns for the said period and had failed to discharge service tax. It appeared that the Appellant had evaded service tax totally amounting to Rs. 41,35,030/-. The Appellant deposited service tax amount of Rs. 6,39,842/- in cash and Rs. 34,95,188/- through Cenvat credit, totally amounting to Rs. 41,35,030/- during the course of inquiry.

2.1 On culmination of investigation, Show Cause Notice No. SGN/38/CEP/Kutch/2019-20 dated 6.1.2020 was issued to the Appellant calling them to show cause as to why service tax amounting to Rs. 41,35,030/- 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 of Rs. 1,65,953/- under Section 75 of the Act and service tax amounting to Rs. 41,35,030/- deposited during inquiry should not be appropriated against total service tax liability. The notice also proposed imposition of penalty under Sections 76, 77 and 78 of the Act and recovery of late fee of Rs. 70,600/- under Section 70 of the Act read with Rule 7C of the Service Tax Rules, 1994 for late filing of ST-3 Returns.

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. 41,35,030/- under proviso to Section 73(1) of the Act and appropriated service tax amounting to Rs. 41,35,030/- deposited during inquiry against confirmed demand. The adjudicating authority ordered for recovery of interest of Rs. 1,65,953/- under Section 75 of the Act and appropriated interest of Rs. 53,313/- deposited during inquiry. The impugned order imposed penalty of Rs. 41,35,030/- under Section 78 of the Act and Rs. 10,000/- under Section 77 of the Act and late fee of Rs. 70,600/- under Section 70(1) of the Act read with Rule 7 of the Service Tax Rules, 1994.

3. Being aggrieved, the Appellant preferred the present appeal contending, inter alia, that

(i) There is no suppression or misstatement and therefore the penalty under Section 78 of the Finance Act, 1994 is not invocable. This is not the case of evasion of Service Tax by them but the case is of delay in payment of Service Tax liability which they had already paid before the issuance of Show Cause Notice. Out of cash liability of Rs. 6,55,314/-, Rs. 3,54,927/- was already paid before initiation of inquiry against them and remaining amount was also paid on 23.1.2019 and 5.2.2019 and in any case before issuance of SCN. The Department has demanded Service Tax only on the basis of documents submitted by them. Nothing was suppressed by them. The investigation did not unearth any suppressed transaction or any unaccounted provision of service provided by them to any service recipient which has not been taken into account. There is no deliberate act by them to evade the Service Tax. They had maintained all the records regarding the service they have provided. The only reason for delay in payment of Service Tax is the financial hardship which they had been suffering. Due to this reason, they were unable to pay their liability. The department alleged in the SCN that the appellant has not paid / short paid the service tax by the reason of fraud, willful misstatement and suppression of fact but did not mention as to how the appellant has committed fraud, which material fact has been suppressed and which statement has been misstated. It is not the case that they had provided any taxable service, received the consideration in cash and hide/ suppressed the detail to evade the tax. Only non-payment of tax in time



and not filing of returns are not the ingredients to allege the fraud, suppression and misstatement and relied upon the following case laws:

- (a) ITC Infotech India Ltd., -2015 (39) STR 0818 (Tri.-Bang)
- (b) Sainik Mining and Allied Services Ltd - 2019 (28) GSTL 156
- (c) Industrial Security Agency - 2008(11) STR 347
- (d) Saurav Ganguly - 2016 (43) STR 482

(ii) That penalty of Rs. 10,000/- under Section 77 of the Act and penalty of Rs. 70,600/- under Section 70 of the Act are harsh as they had already paid the Service Tax liability prior to issuance of Show Cause Notice. The liability was delayed due to financial hardship and not due to any suppression of fact, fraud or misstatement. Therefore, the penalty imposed upon them may be dropped.

4. Hearing in the matter was scheduled in virtual mode through video conferencing on 25.3.2022. Shri Girish Agarwal, Chartered Accountant, appeared on behalf of the Appellant. He reiterated the submissions made in appeal memorandum and stated that they had already discharged service tax liability and there was no suppression of facts.

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. 41,35,030/- 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. 2016-17 to June, 2017 but had not deposited / short deposited service tax in Government Exchequer. The Appellant had also failed to file ST-3 Returns for the said period. The Show Cause Notice was issued to the Appellant for demanding service tax totally amounting to Rs. 41,35,030/-. The adjudicating authority confirmed service tax demand of Rs. 41,35,030/- 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 allegation 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 April, 2016 to June,2017 but contended that there was no suppression or misstatement and hence, penalty under Section 78 of the Finance Act, 1994 is not imposable. It was contended that this is not the case of evasion of Service Tax by them but the case is of delay in payment of Service Tax liability which they had already paid before the issuance of Show Cause Notice. The Department has demanded Service Tax only on the basis of documents submitted by them. Nothing was suppressed by them. The investigation did not unearth any suppressed transaction or any unaccounted provision of service provided by them to any service recipient which has not been taken into account. There is no deliberate act by them to evade the Service Tax. They had maintained all the records regarding the service they have provided. The only reason for delay in payment of Service Tax is the financial hardship which they had been suffering. Due to this reason, they were unable to pay their liability and relied upon various case laws.

7.1 I find that the Appellant has not disputed about confirmation of service tax demand or recovery of interest. I, therefore, uphold the impugned order to that extent. Regarding invocation of extended period of limitation under Section 73 of the Act and imposition of penalty under Section 78, it is observed from the records that the Appellant had charged and collected service tax from their clients but did not deposit /short deposit the same in Government exchequer during the period from F.Y. 2016-17 to June, 2017, which was unearthed during investigation carried out against them. The Appellant had also not filed ST-3 returns for the said period and had failed to discharge service tax. Had there been no investigation against them, non-payment of service tax by the Appellant would have gone unnoticed. 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. Since invocation of extended period of limitation on the grounds of suppression of facts is upheld, 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 is correctly held liable to penalty under Section 78 of the Act. I, therefore, uphold the penalty imposed under Section 78 of the Act. The Appellant has claimed to have deposited service tax amount of Rs. 3,54,927/- before initiation of inquiry. If that be the case, said service tax amount cannot be part of service tax demand under Section 73(1) and consequent penalty imposed under Section 78 of the Act. I have gone through the relevant Challans contained in appeal memorandum. However, the same are not tallying with service tax payment details mentioned at Para 19 of the SCN and Annexure-B of SCN. I, therefore, remand the matter to the adjudicating authority for limited purpose of verifying relevant Challans evidencing service tax payment made prior to initiation of inquiry. Such service tax amount to be excluded from service tax demand and consequent penalty imposed under Section 78 of the Act. The Appellant is also directed to produce relevant documents/ information to the satisfaction of the Adjudicating authority. The remand proceedings to be carried out by issuing speaking order and by adhering to the principles of natural justice.

8. Now, I examine various case laws relied upon by the Appellant as under:

(a) ITC Infotech India Ltd. reported as 2015 (39) STR 0818 (Tri.-Bang) :

In the said case, the party had not paid service tax on "Manpower Recruitment or Supply Agency" service, which was detected during audit of records of the party undertaken by the Departmental officers. The party paid service tax along with interest before issuance of SCN. The adjudicating authority confirmed service tax demand but dropped the proposal to impose penalty under Section 78. The Department reviewed the said order on the grounds that there was suppression of facts with intent to evade payment of duty and hence, penalty was imposable on the party. The Commissioner (Appeals) allowed the appeal of the Department. The party filed appeal before the Hon'ble CESTAT who allowed the appeal by observing that the adjudicating authority had refrained from imposing penalty under Section 78, by invoking provisions of Section 80 of the Act, which clearly demonstrated that non-payment of



service tax by the appellant was not due to wilful suppression coupled with the intention to evade payment of service tax. Thus, facts involved in the relied upon case law were different and distinguishable from the present case.

- (b) Sainik Mining and Allied Services Ltd reported as 2019 (28) GSTL 156:

In the said case, the party was providing certain services to M/s. Rajasthan State Mines and Minerals Ltd but was not paying service tax. Accordingly, SCN was issued to them for demanding service tax by classifying the services under Site Formation and Clearance service. The matter reached to the Tribunal. The Tribunal held that disputed services were appropriately classifiable under 'Mines Service'. The Tribunal further observed that the Adjudication Authority vide the impugned order has also held the entire activity to be classifiable under mining services but those findings were contrary to the Show Cause Notice and hence, not sustainable. Regarding penalty, the Tribunal observed that Show Cause Notice was within the first year of the activity made taxable and benefit of non-awareness can readily be extended to the appellant. The Tribunal further held that there was no positive act alleged by the Department which may amount to committing suppression of facts or which may reflect any mala fide on part of the appellant with an intention of evading tax. Whereas in the present case, non-payment/ short payment of service tax by the Appellant was unearthed during investigation carried out against them and there was suppression of facts with intent to evade payment of service tax, as detailed in para supra. The said case law is therefore not applicable to the facts of the present case.

- (c) Industrial Security Agency reported as 2008(11) STR 347 :

In the said case, it was observed during scrutiny of records of M/s BSNL that the appellant had provided Security Agency Service to M/s BSNL during the period from April, 2000 to December, 2003 but the said fact was not disclosed by the Appellant while obtaining service tax registration and had not filed ST-3 Return for the said period. The SCN was issued to the Appellant for demanding service tax and proposing penalties under Sections 76, 77 and 78. The Tribunal, inter alia, set aside penalty under Section 78 on the ground that non-submission of returns

*du*





would not amount to suppression of facts attracting the provisions of Section 78 and that non-submission of the return was the result and concomitant of non-registration for which penalty has already been imposed under Section 77 of the Act. In the present case, the Appellant was registered with Service Tax and had also charged and collected service tax from their clients but did not deposit the same in Government account. Thus, facts involved in the present case are different than the relied upon case law and consequently, reliance placed on the said case law is not sustainable.

(d) Saurav Ganguly reported as 2016 (43) STR 482 :

In the said case, the appellant had challenged Show Cause Notice issued to him for demanding service tax on the activities undertaken by him, by way of filing writ petition before the Hon'ble Calcutta High Court. The Hon'ble Court allowed the writ petition vide decision dated 30.6.2016 on various counts. The Department challenged the said decision before the Hon'ble Calcutta High Court by filing writ appeal, which was allowed by the Hon'ble Court on the grounds that the writ ought not to have been entertained when the respondent-writ petitioner had participated in the assessment proceedings and that the appellate authority under the service tax law was the appropriate authority to adjudicate upon the mixed question of facts and law relating to the extended period of limitation and the issue whether the respondent was assessable to service tax or not. Thus, the relied upon case law has been reversed by the Hon'ble High Court in subsequent proceedings, and reliance placed on it is, therefore, not sustainable.

9. Regarding penalty of Rs. 10,000/- imposed under Section 77 of the Act, I find that the adjudicating authority has imposed penalty for not paying service tax properly and not following procedures of 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.

10. Regarding penalty of Rs. 70,600/- imposed under Section 70(1) of the Act read with Rule 7C 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 and April-June, 2017, as per Para 1.18 of the impugned order. I concur with the findings of the adjudicating authority and uphold imposition of penalty of Rs. 70,600/- under Section 70(1) of the Act.

11. In view of above, I set aside the impugned order to the extent of confirmation of demand under Section 73(1) and imposition of penalty under Section 78 of the Act and remand the matter for quantification of service tax demand and penalty under Section 78 of the Act as per direction contained in Para 7.1 above. The remaining portion of impugned order is upheld.

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

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

सत्यापित,



विपुल शाह

अधीक्षक (अपील्स)

  
(AKHILESH KUMAR)  
Commissioner (Appeals)

27<sup>th</sup> April, 2022

By RPAD

To, M/s. Swift Logiship Solutions, 203-204, Trade Centre, Plot No. 46, Sector 8, Gandhidham.	सेवा में, मैसर्स स्विफ्ट लॉजिस्टिक्स सॉल्यूशंस, 203-204, ट्रेड सेंटर, प्लॉट नंबर 46, सेक्टर 8, गांधीधाम।
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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।

