: : 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

रजिस्टर्डडाकए.डी. द्वारा :- DIN-20220764SX0000777A99

क	अपील / फाइलनंख्या/ Appeal /File No.	मूलआदेशसं / OIONo.	दिनांक/ Date
	V2/269/RAJ/2021	27/D/AC/2020-21	26-03-2021

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

RAJ-EXCUS-000-APP-196 -2022

आदेश का दिनांक / Date of Order: **14.07.2022** जारी करने की तारीख / Date of issue: **15.07.2022**

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 मे 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. Marwadi Shares & Finance Ltd., Marwadi Finance Plaza, Nana Mava Main Road,Near Iscon Mega Mall, Off 150 feet Ring Road,Rajkot - 360 001

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, आर० के० 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, BhaumaliBhawan, 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 सार्वजिनक 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 सार्वजिनक 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 is 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 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 अपेक्षन 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 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 केडीट 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 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 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 आदेशो 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, 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 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. Marwadi Shares & Finance Ltd, Rajkot (hereinafter referred to as "Appellant") has filed Appeal No. V2/269/RAJ/2021 against Order-in-Original No. 17/DC/KG/2020-21 dated 18.3.2021 (hereinafter referred to as 'impugned order') passed by the Deputy Commissioner, Central GST, Division-I, Rajkot (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that the Appellant was holding Service Tax Registration No. AABCM5192KST001 under the categories of Stock Broker Service, Banking & Financial Service and Business Auxiliary Service. During the course of the audit of the records of the Appellant for the Financial Year 2009-10 by the Departmental officers, it was observed that the Appellant was collecting amount under "Interest Free Deposit Scheme" from their clients while opening Demat account. The Appellant floated five types of Deposit Schemes for Demat account holders and collected an amount of Rs. 10,000/-, Rs. 4,000/-, Rs. 3,000/-, Rs.2,500/- and Rs.1,250/- as interest free deposit. From the said amounts, the Appellant deducted amount of Rs.1000, Rs.400, Rs.300, Rs. 250 and Rs.125 respectively in the first year of account opening towards Annual Maintenances Contract ("AMC") Fees and paid service tax on the said amounts and remaining amounts of Rs. 9000/-, Rs. 3600/-, Rs. 2700/-, Rs. 2250/- and Rs. 1125/- respectively were retained by the Appellant as 'interest free refundable deposit' and no service tax was paid on the said amounts. It appeared that the amounts retained by the Appellant were used by them for their financial operations or for earning interest. It appeared that the Appellant was liable to pay service tax on such retained amount under the category of Stock Broker Service. The Appellant was issued various Show Cause Notices for the period from F.Y. 2006-07 to F.Y. 2015-16. For the subsequent period of April, 2016 to June, 2017, the Appellant was asked to provide relevant details.

2.1 Based on the details provided by the Appellant, Show Cause Notice No. V.84(4)-6/MP/D/2019-20 dated 9.4.2019 was issued to the Appellant, calling them to show cause as to why service tax amounting to Rs. 13,10,762/- should not be demanded and recovered from them under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as 'Act'), along with interest under Section 75 of the Act and proposed imposition of penalty under Sections 76 and 77 of the Act.

2.3 The above Show Cause Notice was adjudicated by the adjudicating authority vide the impugned order who confirmed demand of service tax totally amounting to Rs. 13,10,762/- under Section 73(1) of the Act, along with interest under Section 75 of the Act and imposed penalty of Rs. 1,31,076/- under Section 76 of the Act and penalty of Rs. 10,000/- under Section 77 of the Act.

3. Being aggrieved, the Appellant has filed the present appeal contending, *inter-alia*, as under:

(i) That observations made by the Adjudicating Authority in the impugned order are contrary to the documentary evidences placed before him as much as they are not engaged in providing any banking & financial services but a registered broking firm with Bombay Stock Exchange; that evidence in form of (i) circular notice No. 80626/01 dated 17.03.2001 issued by Stock Exchange, Mumbai (ii) Certificate of Chartered Accountant establishes that no interest was earned by them on such deposit which were not considered by the adjudicating authority. That the said deposit amount was retained as 'security' by accounting for the same in the balance sheet as 'current liability' and the same was not employed for any financial gain.

(ii) The department has taken dual stand while arriving at service tax liability, as at one hand set off of refund of security deposit is considered against receipt i.e. treating as "deposits" and on other hand it is demanding service tax on the said amount treating the same as income and hence demand is not sustainable. That the case laws in respect of M/s. Laxmi Machine Tools [1992 (57) ELT 211 (Mad)], M/s. VST Inds Ltd [1998(97) ELT 395 (SC)] and in the case of BSNL 2010(17) STR 322 (Commr Appl.) are applicable in their case.

(iii) That it was their bona fide belief that amount collected as deposit is not liable to service tax and hence they neither charged nor collected service tax; that therefore 'cum duty' principle for the purpose of computing the service tax liability was applicable in light of the decision in the case of M/s. Advantage Media Consultant [2008(10) STR 449] which is maintained by Supreme Court as reported in 2009(14) STR J49 (SC). That non-collection and non-payment of service tax has occurred solely on account their bonafide belief and hence no penalty under Sections 76 and 77 could be imposed.

4. Personal Hearing in the matter was scheduled on 8.6.2022 in virtual mode through video conferencing. Shri Chetan Dethariya, Chartered Accountant, appeared on behalf of the Appellant. He reiterated the submission made in appeal memorandum as well as in additional written submission. He further submitted that the principal SCN was decided by the Hon'ble CESTAT in their favour.

4.1 In additional written submission dated 1.6.2022, it has been contended that the Hon'ble CESTAT, Ahmedabad vide Order No. A/10338-10339/2022 dated 12.4.2022 passed in their own case for the period from F.Y. 2006-07 to F.Y. 2011-12, has decided the issue in their favour.

5. I have carefully gone through the facts of the case, the impugned order, and grounds raised in Appeal Memorandum and in additional written submission. The issue to be decided in the present appeal is whether the Appellant is required to pay service tax on the amounts collected from their clients under 'Interest Free Deposit Scheme' or not.

6. On perusal of the records, I find that the Appellant had floated certain deposit schemes for opening Demat account, under which, on payment of certain amount upfront in the form of deposit, no AMC charges were required to be paid. The adjudicating authority observed that the Appellant had earned compensation on deposit collected by them from their clients opting for deposit scheme, which was adjusted against AMC charge of Demat accounts. The adjudicating authority concluded that AMC charges for maintaining Demat accounts were hidden in the deposit collected from the clients in the form of interest and the Appellant was required to pay service tax on such transactions. The adjudicating calculated service tax on equivalent amount of AMC Fees charged from other clients who had not opted for said deposit scheme, by resorting to Rule 3 of the Service Tax (Determination of Value) Rules, 2006. The impugned order confirmed service tax of Rs. 13,10,762/- under Section 73(1) of the Act and imposed penalty of Rs. 1,31,076/- under Section 76 and Rs. 10,000/- under Section 77 of the Act.

6.1 The Appellant has contended that the said deposit amount was retained by them as 'security' by accounting the same in the balance sheet as 'current liability' and the same was not employed for any financial gain. The adjudicating authority has not considered certificate of Chartered Accountant certifying that no interest was earned by them on such deposit. The Appellant relied upon Order No. A/10338-10339/2022 dated 12.4.2022 passed by the Hon'ble CESTAT, Ahmedabad

in their own case for the past period.

7. I find that the issue involved in the present case stand decided by the Hon'ble CESTAT, Ahmedabad vide Order No. A/10338-10339/2022 dated 12.4.2022 in Appellant's own case for the previous period. The relevant portion of the Order is reproduced herein under:

> "4. We have gone through the records of the case and considered the submissions made by the Appellant in their grounds of appeal as well as the submissions made at the time of hearing and also the submissions made learned Authorized Representative. The dispute in the present appeals relates to service tax on interest free deposit amount collected by the Appellant from the demat account holders under the Scheme and in lieu of the same Appellant has not collected AMC charges. However, we find that the said "Interest Free Deposit" did not represent value of any taxable service. The said deposit amount was kept with the Appellant as security deposit to adjust the amount in case of any default in making payment by the client. The said deposit amount also refundable to client. We find that in the present matter Appellant also produced Certificate issued by the Chartered Accountant who certify that Appellant have not used the amount collected by them as "Interest Free Security Deposit" from client for any financial operations or for earning any interest and shown the said amount in Balance Sheet as Current Liability. The amount collected by the Appellant from the clients is in fact an interest free refundable deposit and is not towards any advance for a service. It is, therefore, not taxable.
>
> 4.1 We further find that Section 67 provides that taxable value is the consideration whether in monetary or monetary form. Therefore, if any benefit accrues to either party which is not in the nature of consideration agreed upon by the parties, the same is not liable to be added to the value of service in terms of Section 67. Further, there is no deeming provision for increasing the value of consideration either in Section 67 or in the Service Tax (Determination of Value) Rules, 2006 framed thereunder. Here, the deposit is taken for a different purpose. Thus, the said deposit serves a different purpose altogether and it is not a consideration for providing service. The "consideration for service" is absent in the present case, therefore, what can be levied to Service Tax is only the consideration received for the service charged and no notional interest on the deposit taken can be levied to tax. There is no provision in Service Tax law for deeming notional interest on deposit taken as a consideration for providing the services. Therefore, in the absence of a provision in law providing for a notional addition to the

value/price charged, the question of adding notional interest on the deposit amount as a consideration received for the services rendered does not arise.

4.2 We also find that Supreme Court in Commissioner of Service Tax v. M/s. Bhayana Builders 2018 (10) G.S.T.L. 118 (S.C.), while deciding the appeal filed by the Department against the decision of the Tribunal, also explained the scope of Section 67 of the Act. The Supreme Court observed that any amount charged which has no nexus with the taxable service and is not a consideration for the service provided does not become part of the value which is taxable under Section 67. The observations are :

> *"The amount charged should be for "for such service provided" : Section 67 clearly indicates that the gross amount charged by the service provider has to be for the service provided. Therefore, it is not any amount charged which can become the basis of value on which service tax becomes payable but the amount charged has to be necessarily a consideration for the service provided which is taxable under the Act. By using the words "for such service provided" the Act has provided for a nexus between the amount charged and the service provided. Therefore, any amount charged which has no nexus with the taxable service and is not a consideration for the service provided does not become part of the value which is taxable under Section 67. The cost of free supply of goods provided by the service recipient to the service provider is neither an amount "charged" by the service provider nor can it be regarded as a consideration for the service provided by the service provider. In fact, it has no nexus whatsoever with the taxable services for which value is sought to be determined."*

The aforesaid view was reiterated by the Supreme Court in *Union of India* v. *Intercontinental Consultants and Technocrats [2018 (10) G.S.T.L. 401 (S.C.)]* and it was observed that since service tax is with reference to the value of service, as a necessary corollary, it is the value of the services which are actually rendered, the value whereof is to be ascertained for the purpose of calculating the service tax payable thereupon.

4.3 We also find that issue of addition of notional interest on refundable security deposit in the value of service has already been settled by the Tribunal in the following Judgments.

(i) In the case of *Kalani Infrastructure Pvt. Ltd.* - 2018 (8) TMI 247 the Tribunal also took the same view and held as under:-

> *"6. The case of the department is that in addition to the service tax payable on rent, the liability for the tax also extends to the notional interest*

accuring on the lump sum deposit received by the Appellant from the lessee. We find that such a stand is not justified particularly in view of the decision of the Tribunal in the case of Murli Relators Pvt. Ltd. (supra) cited by the Appellant in their support. The Tribunal observed as follows:

6.3 In the case before us, there is not even an iota of evidence adduced by the Revenue to show that the security deposit taken has influenced the price i.e. the rent in any way. In the absence of such evidence, it is not possible to conclude that the notional interest on the security deposit would form part of the rent. We also do not find any reason for adopting a rate of 18% per annum as rate of interest. Adoption of such an arbitrary rate militates against concept of valuation. In view of the foregoing, we hold that notional interest on interest free security deposit cannot be added to the rent agreed upon between the parties for the purpose of levy of service tax on renting of immovable property."

(ii) In the case of Murli Realtors Private Limited Others. v. Commissioner of Central Excise, Pune-III [2015 (37) S.T.R. 618 (Tri. - Mumbai)], a Division Bench of the Mumbai Tribunal made the following observations with regard to the security deposit towards the renting of immovable property and the observations are as follow :

"6.1 Section 67 of the Act. reproduced in para 4.1 above, clearly provides that only the consideration received in money for the service rendered is leviable to Service Tax. The consideration for renting of the immovable property is the amount agreed upon between the parties and on this amount the appellant is discharging Service Tax liability. The security deposit is taken for a different purpose altogether. It is to provide for a security in case of default in rent by the lessee or default in payment of utility charges or for damages, if any, caused to the leased property. Thus, the security deposit serves a different purpose altogether and it is not a consideration for leasing of the property. The consideration of the leasing of the property is the rent and, therefore, what can be levied to Service Tax is only the rent charged and no notional interest on the security deposit taken can be levied to tax. There is no provision in Service Tax law for deeming notional interest on security deposit taken as a consideration for leasing of the immovable property. Therefore, in the absence of a specific provision in law, as held by the Hon'ble Apex Court in the case of Moriroku UT India (P) Ltd. (supra), there is no scope for adding any notional interest to the value of taxable service rendered. Even in the excise law, under Rule 6 of the Valuation Rules, unless the department shows that the deposit taken has influenced the sale price, notional interest cannot be automatically included in the sale price for the purpose of levy. In the absence of a provision in law providing for a notional addition to the value/price charged, the question of adding notional interest on the security deposit as a consideration received for the services rendered cannot be sustained and we hold accordingly."

(iii) In *M/s. ATS Township Private Limited* v. *Commissioner, Central GST, Noida* [2019 (11) TMI 297 (CESTAT-Allahabad)], a Division Bench of this Tribunal observed as follows:

> *"3. The issue relates to inclusion of the amount collected by the appellant as IFMS. Revenue's contention is that the said collected amount would fall under the category of "Management Maintenance and Repair Services" and would be liable to service tax separately. We note that the said amount collected by the appellant from the flat owners is towards the security for the purpose of maintenance of the building and to cover the eventual default made by any of the flat owners for payment of monthly maintenance charges. As per the agreement with the flat owners, the said amount is liable to be refunded to them within the period of Six months from the date of termination of the said agreement. The Adjudicating Authority observed that the genuineness of the said term is very much doubted inasmuch as the appellant had not produced any evidence to show that the said IFMS was ever refunded to anyone. We really fail to understand the said reasoning of the Adjudicating Authority. The amount is refundable in case of termination of the ownership agreement and if no such termination has taken place till date, the amount would not be refunded. As long as the provisions for refund of the said amount in the agreement itself is there, it has to be considered that the said amount is refundable and was towards security deposits and was not for the purpose of providing any services, so as to levy tax on the same."*

In view of the above judgments coupled with the facts that department could not bring on record any clinching evidence that the deposit has influenced the service charges, the demand is not sustainable.

05. Thus, for all the reasons stated above, it is not possible to sustain the impugned orders passed by the Commissioner (Appeals). Accordingly, the impugned orders are set aside and the appeals are allowed."

8. I find that the Show Cause Notice issued in the present proceedings was based on audit observations made for the Financial Year 2009-10. I have also gone through the Certificate dated 16.7.2019 issued by M/s Mandaliya & Associates, Chartered Accountant, contained in appeal memorandum, which was submitted by the Appellant before the adjudicating authority. In the said certificate, it has been certified that the Appellant had not used the amount collected as 'Interest Free Security Deposit' from their clients in F.Y. 2016-17 and 2017-18 for any financial operations or for earning any interest. Thus, the facts involved in the present case is identical to the above case decided by the Hon'ble Tribunal. By respectfully following the CESTAT Order dated 12.4.2022 *supra*, I hold that the Appellant is not liable to pay service tax in respect of amounts collected under 'Interest Free

Security Deposit' scheme. Consequently, I set aside the confirmation of service tax demand of Rs. 13,10,762/- under Section 73(1) of the Act, interest under Section 75 ibid and imposition of penalty under Sections 76 and 77 of the Act.

9. In view of above, I set aside the impugned order and allow the appeal.

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

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

सत्यापित,

विपुल शाह
अधीक्षक (अपील्स)

(AKHILESH KUMAR)
Commissioner (Appeals)

14th July, 2022.

By RPAD

To, M/s Marwadi Shares & Finance Ltd, Marwadi Financial Plaza, Nana Mava Main Road, Off 150 Feet Road, Rajkot.	सेवा में, मेसर्स मारवाड़ी शेयर्स एंड फाइनेंस लिमिटेड, मारवाड़ी फाइनेंशियल प्लाजा, नाना मवा मेन रोड, 150 फीट रोड, राजकोट।

प्रतिलिपि :-

1) मुख्य आयुक्त,वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र,अहमदाबाद को जानकारी हेतु।
2) प्रधान आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
3) ऊप आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट -I मण्डल, राजकोट को आवश्यक कार्यवाही हेतु।
4) गार्ड फ़ाइल।