आयुक्त का कार्यालय) ,अपीलस(
Office of the Commissioner,
केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate-Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan,Revenue Marg,Ambawadi,Ahmedabad-380015
. ☎ 26305065-079 : टेलेफैक्स 26305136 - 079 :
Email- commrappl1-cexamd@nic.in

DIN- 20220264SW000012121F

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/354/2021 -Appeal-O/o Commr-CGST-Appl-Ahmedabad / 6196

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-66/2021-22
दिनाँक Date : 14.02.2022 जारी करने की तारीख Date of Issue : 14.02.2022

आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)

ग Arising out of Order-in-Original Nos. 26/ADC/2020-21/MLM dated 07.12.2020, passed by the Additional Commissioner, CGST & C. Ex., Ahmedabad-North.

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

Appellant- M/s. Milestone Tradelinks Pvt. Ltd., 203, Anand Milan Complex, Opp. Navrangpura Jain Derasar, Navrangpura, Ahmedabad-380009.

Respondent- The Additional Commissioner, Central GST & Central Excise, Ahmedabad-North.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way:

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies tc the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur 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.

(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) 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 and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/– फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गत.–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद –380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor,Bahumali Bhawan,Asarwa,Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.

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/- and Rs.10,000/- where amount of duty / penalty / demand / 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 Asstt. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number 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 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है ।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है .

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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.

इस इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, 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."

ORDER-IN-APPEAL

1. This order arises out of an appeal filed by M/s. Milestone Tradelinks Pvt. Ltd., 203, Anand Milan Complex, Opp. Navrangpura Jain Derasar, Navrangpura, Ahmedabad-380009 [formerly known as M/s. Vyom Tradelink Pvt. Ltd., 10th Floor, Heritage Tower, Besides Gujarat Vidyapith, Usmanpura, Ahmedabad-380014] (hereinafter referred to as '*appellant*') against Order in Original No. 26/ADC/2020-21/MLM dated 07.12.2020 (hereinafter referred to as '*the impugned order*') passed by the Additional Commissioner, CGST& Central Excise, Commissionerate:Ahmedabad-North (hereinafter referred to as '*the adjudicating authority*').

2. Facts of the case, in brief, are that M/s. Vyom Tradelink Pvt. Ltd., Ahmedabad was engaged in providing Business Auxiliary Service and holding Service Tax Registration No. AACCV0124DST002.The said firm M/s. Vyom Tradelink Pvt. Ltd., Ahmedabad was subsequently merged with M/s. Milestone Tradelinks Pvt. Ltd., Ahmedabad (the 'appellant') vide the Order of Merger No. CP (CA) No. 11/2019 dated 29.01.2020 issued by Regional Director, NWR, Ahmedabad. Audit of the financial records of the appellant was undertaken by the departmental audit officers for the period F.Y. 2012-13 and Final Audit Report No. 414/2013-14 dated 10.06.2014 was issued, mentioning following discrepancies:

- **Audit Objection No. 1**: On scrutiny of Reconciliation of ST-3 returns filed for Business Auxiliary Service with the audited Balance Sheet and Books of Accounts for the year 2012-13, a difference of Rs. 2,99,77,481/- in the taxable value was observed, which made the appellant liable for Service Tax amounting to Rs. 37,05,217/-, which was recoverable from them alongwith interest.

- **Audit Objection No. 2**: The appellant had received a Work Order No. 03/CE/FUEL/IMP-C/HPG/24/Vol.III dated 23.03.2011 from M/s. Haryana Power Generation Corporation Ltd. (for brevity 'HPGCL'). As per the contract, M/s. HPGCL placed a work order to the appellant for inland logistics activities and agreed to pay Rs. 185 per M.T towards 'handling charges' and Rs. 78.86 per M.T towards 'port charges', which were inclusive of Service Tax as per the agreement. Accordingly, the appellant was required to pay Service Tax @ 12.36% (applicable rate) on the abovementionedcum duty value of total Rs. 263.86 per M.T which comes to assessable value @ 234.83 per M.T. However, it was noticed that the appellant had paid Service Tax on the

taxable value @ 167.72 per M.T, which resulted into short payment of Service Tax amounting to Rs. 24,27,442/-, by the appellant.

- **Audit Objection No. 3**: The appellant had availed Cenvat Credit of Rs. 6,557/- on the Invoice No. SICA/VYOM/ENNR/01 dated 01.03.2012, in respect of which they could not be able to give satisfactory reply so as to examine whether the said service is covered under the purview of 'input services' as defined under Rule 2(l)(i) of the Cenvat Credit Rules, 2004 or otherwise.

3. Based on the audit observations, Show Cause Notice F. No. STC/4-59/O&A/15-16 dated 25.10.2017 was issued to the appellant demanding Service Tax amounting to Rs. 61,32,659/- from them, as per Audit Objection No. 1 and No. 2 as mentioned above. Further, Cenvat Credit amounting to Rs. 6,557/-, as per Audit Objection No. 3 was also demanded from the appellant towards wrong availment of Cenvat Credit.

3.1 The Show Cause Notice F. No. STC/4-59/O&A/15-16 dated 25.10.2017 has been adjudicated by the adjudicating authority vide the impugned order, as briefly reproduced below:

(i) He confirmed the demand of Service Tax of Rs. 61,32,659/- (Rs. 37,05,217/- + Rs. 24,27,442/-) against the appellant towards short payment/non-payment of Service Tax during F.Y. 2012-13 and ordered to be recoveredfrom them under the proviso to Section 73 (1) of the Finance Act, 1994, alongwith interest under Section 75 of the Finance Act, 1994.

(ii) Penalty of Rs. 61,32,659/- has been imposed on the appellant, under the provisions of Section 78 of the Finance Act, 1994.

(iii) He also confirmed the demand towards wrongly availed and utilised CENVAT Credit of Rs. 6,557/- from the appellant under Rule 14 of Cenvat Credit Rules, 2004 read with Section 73(2) of the Finance Act, 1994, alongwith interest under Section 75 of the Finance Act, 1994. Further, an amount of Rs. 6,557/- voluntarily paid by the appellant towards the confirmed demand of Cenvat Credit alongwith interest of Rs. 4721/- (vide Challan No. 00314/06.10.2017) have also been appropriated by the adjudicating authority.

(iv) Penalty of Rs. 6,557/- has been imposed on the appellant, under Rule 15(3) of the Cenvat Credit Rules, 2004 readwith Section 78 of the Finance Act, 1994. He also appropriated the amount of

Rs. 984/- (vide Challan No. 00314/06.10.2017) voluntarily paid by the appellant towards the said penalty payable by them.

(v) Penalty of Rs. 10,000/- has been imposed on the appellant, for failure to self-assess the correct Service Tax liability, under Section 77(2) of the Finance Act, 1994.

4. Being aggrieved with the impugned order, the appellant preferred this appeal on the grounds, which are as reproduced in following paragraphs.

4.1 The Order is issued without appreciating their written submission. The adjudicating authority simply stated that the claimant's contention is not acceptable, however, refrained from giving any reasoning on the written submissions with respect to show cause notice as to why the submission of the appellant is not acceptable to them. Such an adjudication order is, therefore a non-speaking order. Theyrely upon the guidelines issued by Ministry to the quasi-judicial authorities vide Instruction F.No. 390/CESTAT/24/2016-JC on date 13.04.2016, wherein Para-5 (d) states that "*The quasi judicial orders subject to judicial review have to be necessarily a speaking orders recording every fact and reason leading to the final decision in the matter. Non speaking orders or the orders passed without recording the submissions and reasons for passing the final order is non est in law*". They also rely upon following judicial pronouncements in support of their contention:

- Amway India Enterprises Pvt. Ltd. Vs. Commissioner of Service Tax, Delhi [2015 (39) STR 1006 (Tri. Del.)]
- Padmavati Tubes Vs. Commissioner of C.Ex. & S.T., Vapi [2017 (351) ELT 38 (Guj. H.C)]
- Cadila Pharmaceuticals Ltd., Vs. Commissioner of Central Excise [2017 (349) ELT 694 (Guj. H.C)]
- Ami Clearing and Forwarding (P.) Ltd., Vs. Assistant Commissioner of Service Tax, Mumbai [2011 (30) STT 68 (Mum.-CESTAT)]

4.2 As regards the demand of Rs. 37,05,217/-, it is submitted that the said amount is related to Bad Debts and out of which Rs. 2,99,71,487/- pertains to sale of coal. The said amount was realized in the year 2012-13, which is shown as receipt. The appellant was dealing with sale of imported coal plus providing service of clearance of coal, for which separate invoices are issued. However, the payment was being received in consolidated manner which is adjusted sequentially invoice wise, activity wise. And the amount likely to be unrealized is accordingly bifurcated and is being shown in the books of account.

4.2.1 The adjudicating authority has overlooked the certificate submitted from PEC Ltd. which clearly mentioned about the payment made for goods. In fact, what is mentioned by them is as per the Balance Sheet audited by the statutory auditor, and the data what are reflected in Reconciliation carried out by the department are from the balance sheet and relevant record maintained in the books of account. The adjudicating authority did not give his findings why he is not relying the Audited Balance Sheet certified by the Chartered Accountant and that no finding was also given as to why he is not relying on the certificate from PEC Ltd.

4.2.2 Therefore, it is contended that demand of Service Tax on the value realized against the sale of coal, out of the bad debts provided earlier received in the next year, is not taxable at all and hence demand confirmed is factually not correct.

4.3 As regards the demand of Service Tax of Rs. 24,27,442/-, it is contended that the adjudicating authority has failed to appreciate the submission of the appellant in as much as the total reconciliation was explained how the objection raised in the previous audit report was compiled by way of VCES scheme. The total reconciliation reflecting the handing charges related to coal imported through five vessels were also provided by them to the adjudicating authority and accordingly, none of the service tax is now remained unpaid.

4.3.1 It is contended that as per acceptance of previous year demand and settling under VCES, the demand for current year in relation to invoices received during dispute period was already paid vide Challan No. 00053472306201400984 dated 23.06.2014 for evidencing payment of Service Tax of Rs. 9,65,970/- alongwith Interest of Rs. 3,27,265/-.

4.3.2 Accordingly, the gross mistake in calculation by the audit officer is the only issue and the actual demand stands already paid off. This fact is not disputed by the alleged order nor is the same disputed by the alleged SCN.

4.4 As regards the demand of Rs. 6,557/- towards wrong availment of Cenvat Credit, they have already deposited the said amount alongwith interest of Rs. 4,721/-, as it being small amount they do not want to dispute the same. However, as the amount was deposited before the adjudicating order is issued, the penalty imposed is not justifiable.

4.5 As regards the charges framed against the appellant stating 'willful suppression with the intention to evade duty', they contend that the present case is the case of non-acceptance of documentary evidences by the adjudicating authority and confirming demand without verifying the details and documents provided during the adjudication process. There is no suppression of facts by the appellant, in the present case.

4.6 As regards the penalty imposed, they contend that there was no mala-fide intention on the part of them and also the present issue is solely related to non-acceptance of factual data, hence the provisions of penalty in these circumstances is unsustainable. In the case of Tamilnadu Housing Board Vs. CCE reported in 1194 (74) ELT 9 (SC), it was held that *"an intention to evade tax is not a mere failure to pay the tax, it is much more. The person alleged to have evaded payment of a tax must be proved to be aware of the taxability of the transaction and must deliberately avoided payment of tax. Thus, intent to avoid payment of tax in law much more than mere failure to pay tax"*.

5. The appellant was granted opportunity for personal hearing on 26.10.2021 through video conferencing. Shri Pravin Dhandharia, Chartered Accountant, appeared for hearing as authorised representative of the appellant. He re-iterated the submissions made in Appeal Memorandum.

6. I have carefully gone through the facts of the case available on record, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellant at the time of hearing. The issues to be decided in the present appeal are as under:

(i) Whether the demand of Service Tax amounting to Rs. 37,05,217/- confirmed against the appellantin respect of differential value of Rs. 2,99,77,481/- observed while comparing the taxable value shown in ST-3 Returns and the Books of Accounts for F.Y. 2012-13, is legally correct or otherwise?

(ii) Whether the demand of Service Tax amounting to Rs. 24,27,442/- confirmed against the appellant towards Service Tax short/not paid in respect of Port Charges by them during the F.Y. 2012-13, is legally correct or otherwise?

(iii) Whether the Penalty of Rs. 61,32,659/- imposed on the appellant under the provisions of Section 78 of the Finance Act, 1994, is legally correct or otherwise?

(iv) Whether the demand Rs. 6,557/- confirmed alongwith interest towards wrongly availed Cenvat Credit and also, the penalty imposed under Section 78 of the Finance Act, 1994, is legally correct or otherwise?

(v) Whether the Penalty of Rs. 10,000/- imposed on the appellant, for failure to self-assess the correct service tax liability, under the provisions of Section 77 (2) of the Finance Act, 1994, is legally correct or otherwise?

7. As regards the demand of Service Tax amounting to Rs. 37,05,217/- on account of differential value of Rs. 2,99,71,481/-, while comparing taxable value shown in ST-3 Returns vis-à-vis Books of Account for F.Y. 2012-13, which was confirmed against the appellant, I find that the adjudicating authority has rejected the contention of the appellant that "the differential amount of Rs. 2,99,71,481/- was an amount recovered/realized in the F.Y. 2012-13 from M/s. PEC Limited against Bad Debts Written Off in F.Y. 2009-10 which pertained to sale of imported coal and did not pertain to any taxable services rendered", mentioning following reasons:

(i) The appellant has merely submitted the copy of the letter dated 02.05.2014 issued by M/s. PEC Limited and the Certificate dated 09.05.2013 issued by M/s. Shah Dhandharia & Co., Chartered Accountants.

(ii) There is no mention in the letter dated 02.05.2014 of M/s. PEC Limited that the appellant had supplied the imported coal to M/s. TWBPDCL on behalf of M/s. PEC Limited (on sale basis) nor the appellant have provided any documentary evidences in the form of documents like invoices raised substantiating their contention. As such, there is no concrete evidence provided by the appellant showing that the bad debts recovery was not on account of any taxable services rendered.

(iii) The Chartered Accountant, M/s. Shah Dhandharia & Co., in their Certificate dated 09.05.2013, have not clearly certified that the amount of Rs. 2,99,77,481/- is pertaining to recovery of amount from M/s. PEC, against amount due from sale of coal and not of services or that the amount received does not pertain to any taxable services rendered.

7.1 It is observed from Revenue Para-1 of the FAR No. 414/13-14, based on which SCN has been issued, that the amount of difference of taxable

value arises due to the bad debt recovery as shown in the Profit & Loss Account. Hence, it is undisputed that the difference in value is on account of recovery of bad debt. The SCN has not assigned any reason as to how this recovery of bad debt amounts to taxable service under "Business Auxiliary Service" as defined under erstwhile Section 65(105)(zzb) of the Finance Act, 1994. It is further observed that the appellant has contended before the adjudicating authority that the said amount was towards sale of coal (as per statement of Shri Sarojkumar Nayak, Audited Balance Sheet and Income Reconciliation carried out during the course of audit for period F.Y. 2009-10 to F.Y. 2011-12 and Audit Report No. 182/2012-13).

7.2 It is also observed from the facts mentioned at Para-12 (c) (vi) & (vii) of the impugned order that the appellant has contended before adjudicating authority that "*the amount which was not recoverable from them due to differences in material delivered during the relevant time, they had booked in books of accounts as bad debt to the tune of Rs. 8,09,87,495/- during the year 2009-10 and the same were also reflected in the Financial Balance Sheet of F.Y. 2009-10. Since the transactions entered in relation to sale of coal is not liable to service tax or in other words it is not the part of taxable value.Such transactions were not reflected in the ST-3 returns filed by them, however the same were verified by departmental authority as auditor. During the course of Income Reconciliation (of earlier years before service tax department audit team) as per books and in ST-3 returns, the deduction of Rs. 8,09,87,495/- was claimed in the Year 2009-10 was never objected by the service tax department during the audit for the period 2009-10 to 2011-12 was carried out for which an audit report was issued bearing No. 182/2013-14 dated 10.10.2013*". Further, I find that the adjudicating authority has neither examined the said contention of the appellant nor given his findings in the impugned order in this regard. It is further observed that the appellant has submitted a Certificate dated 04.10.2017 from Chartered Accountant stating that Bad Debt Recovery is not in connection with handling service.

7.3 These are factual details which was not verified by the adjudicating authority in adjudication process. Hence, it would be appropriate in the interest of justice to remand the matter back to the adjudicating authority to examine the contention of the appellant after following the principles of natural justiceand to decide it afresh. Further, the appellant is also directed to produce the relevant documents in support of contentions for arriving at correct reconciliation.

8. As regards the demand of Service Tax amounting to Rs. 24,27,442/- in respect of 'Port Charges', which has been confirmed against the appellant, I find that the said demand has been worked out as per Annexure 'B' to the Show Cause Notice dated 25.10.2017 and confirmed by the adjudicating authority on the basis of contention that "The assesse had been awarded a Work Order No. 03/CE/FUEL/IMP-C/HPG/24/VOLIII dated 23.02.2011 by M/s. Haryana Power Generation Corporation Ltd. (for brevity HPGCL) for inland logistics activities including but not limited to stevedoring, clearing & handling, storage, custom clearing forwarding activities, indenting & placement of rakes, pre-payment of railway freight, loading into wagons and delivery of coal imported. M/s. HPGCL agreed to pay Rs. 185.00 PMT against handling and Rs. 78.86 PMT towards port charges, totally comes to Rs. 263.86 PMT. Both the charges were inclusive of Service Tax as per the agreement. By applying cum tax price formula (S.Tax @ 12.36%), the taxable value comes to Rs. 234.83 PMT. The assesse was required to pay Service Tax @12.36% on taxable value arrived @ Rs. 234.83 PMT, however, the said assesse had paid Service Tax on the taxable value arrived @Rs.167.72 PMT of imported coal and, thereby, they have short paid Service Tax to the tune of Rs. 24,27,442/- on differential value of port charges recovered from M/s. HPGCL under said Work Order from M/s. HPGCL, during Financial Year 2012-13. Here, it is pertinent worthwhile to mention that the assesse had paid Service Tax on taxable value (i.e. ex-tax price) of only handling charges, which was arrived @Rs. 167.72 PMT (wrongly by taking rate of Service Tax of 10.30% instead of prevailing rate of 12.36%). Thus, they had not paid Service Tax @12.36% on taxable value of port charges recovered (@Rs. 78.86 PMT inclusive of S. Tax) by them".

8.1 As regards the recovery of Rs. 78.86 PMT towards 'Port Charges' by the appellant, I find that the appellant has contended that they had never charged Rs. 78.86 PMT from M/s. HPGCL and instead, they were recovering the same on actual basis from such customers vide debit notes issued based on the Invoice received from the Port Authorities (on Pure Agent Basis).

8.2 The appellant has further submitted that the objection was taken during earlier departmental audit for the period from 2009-10 to 2011-12 for which Audit Report bearing No. 182/2013-14 dated 10.10.2013 was issued, including issue of taxability on 'Port Charges'. Subsequently, the said audit objection was settled by the appellant by filing declaration in Form-VCES-1 on 23.12.2013 and by making payment under VCES scheme. Further, the appellant has submitted that accordingly, they have already discharged Service Tax on the 'Port Charges' in respect of cargo unloaded from the Vessels viz. MV Asian Blossom, MV Nord Energy and MV Star Engel as the invoices from the Port Authority were received in the year 2011-12 and

accordingly, the appellant had raised the debit note to M/s. HPGCL, during that period.

8.3 The appellant further contended that in respect of the cargo handled in respect of two vessels viz. MV F. Duckling and MV Medi Genova, they have received invoices for 'Port Charges' from the port in the year 2012-13 and accordingly, the debit notes were raised to M/s. HPGCL in the year 2012-13. Moreover, Service Tax leviable thereon was also worked out to Rs. 9,65,970/- which has been paid alongwith interest amounting to Rs. 3,27,265/- vide Challan No. 984 dated 23.06.2014. It is observed that the appellant has also submitted details of reconciliation of Port Charges in respect of M/s. HPGCL as well as the payment of Service Tax made to the adjudicating authority while submitting reply to the SCN.

8.4 As regards the contention of the appellant in respect of the payment of Service Tax of Rs. 9,65,970/- alongwith Interest of Rs. 3,27,265/-, I also find that the adjudicating authority has taken note of the said fact at para-12(d)(xiii) of the impugned order, however he has not given his findings on reconciliation and appropriation thereof while confirming the demand against the appellant. It is pertinent to mention that the Deputy Commissioner (O&A), Ahmedabad-North vide letter F.No. STC/04-59/O&A/15-16 dated 19.03.2021 also confirmed the fact that the payment of Rs. 12,93,235/- made by the appellant vide Challan No. 00984 dated 23.06.2014 was against the demand raised through SCN No. STC/04-59/O&A/15-16 dated 25.10.2017.

8.5 Further, I also find that the worksheet in Annexure-B is prepared on the basis of the Invoices issued in respect of 'Handling charges' only and the amount towards 'Port Charges' @ Rs. 78.86 PMT (inclusive of Service Tax) is taken on the basis of agreement only. However, the adjudicating authority has not mentioned about any other relevant documents like books of account, ledger or balance sheet which shows that the appellant had recovered the said amount towards 'Port Charges' @ Rs. 78.86 PMT from M/s. HPGCL during the F.Y. 2012-13 (except the amounts recovered against debit notes as mentioned in the said worksheet for which the appellant contended that the payment of Service Tax leviable thereon has been paid as mentioned in para-8.2 & para-8.3 above).

8.6 Accordingly, as regards the demand of Service Tax amounting to Rs.24,27,442/- confirmed against the appellant in respect of amount recovered as 'Port Charges', I find that the adjudicating authority has not given any findings in the impugned order whether any verification was done confirmation of the contention of the appellant about the payments

already made or any reconciliation has been carried out in respect of the amounts received by the appellant against 'Port Charges' vis-a-vis payment of Service Tax leviable thereon, at different point of time. Hence, I find that it would be in the interest of justice to remand back the present issue to the adjudicating authority to decide it afresh, after conducting verification of the payments made by the appellant at different point of time and thorough reconciliation as contended by the appellant and following the principles of natural justice.

9. Further, as regards the contention of the appellant in respect of (i) penalty of Rs. 61,32,659/- imposed under Section 78 of the Finance Act, 1994 and (ii) penalty imposed of Rs. 10,000/- under Section 77(2) of the Finance Act, 1994, I do not find it proper to examine the said issues at this juncture when the substantial issues in question are being remanded to the adjudicating authority. The appellant is free to raise this issue before the adjudicating authority.

10. As regards the contention of the appellant in respect of penalty imposed of Rs. 6,557/- under Rule 15(3) of the Cenvat Credit Rules, 2004 readwith Section 78 of the Finance Act, 1994, I find that the appellant has already paid an amount of Rs. 6,557/- towards wrongly availed Cenvat Credit alongwith interest of Rs. 4,721/- as well as penalty of Rs. 984/- vide Challan No. 00314/06.10.2017 which have been appropriated by the adjudicating authority, as mentioned in Para-27(IV), Para-27(V) and Para-27(VII) of the impugned order.

10.1 It is observed that the SCN issued in the present case on 25.10.2017 and the proviso to Section 78(1) of the Finance Act, 1994 provides that "Provided further that where service tax and interest is paid within a period of thirty days of- (i) the date of service of notice under the proviso to sub-section (1) of Section 73, the penalty payable shall be fifteen percent of such service tax and proceedings in respect of such service tax, interest and penalty shall be deemed to be concluded;".

10.2 Accordingly, I uphold the impugned order to the extent of appropriation of the amount of Rs. 984/- paid by the appellant vide Challan No. 00314/06.10.2017 towards the penalty (as mentioned in para-27(VII) of the impugned order and also set aside the remaining penalty imposed (in excess of Rs. 984/-) on the appellant, by the adjudicating authority as per para-27(VI) of the impugned order.

11. In view of the above, on careful consideration of the relevant legal provisions and submission made by the appellant, I set aside the impugned

order to the extent of confirmation of demand of Service Tax amounting to (i) Rs. 37,05,217/- and (ii) Rs. 24,27,442/- along with interest as well as imposition of penalty of (i) Rs. 61,32,659/- and (ii) Rs. 10,000/- and remand the matter back to the adjudicating authority to examine the contention of the appellant and to decide it afresh, as discussed in Para-7.3, Para-8.6 and Para-9 above, following the principles of natural justice. The impugned order imposing penalty in excess of Rs. 984/- is also set aside.

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

14th February, 2022.

(Akhilesh Kumar)
Commissioner (Appeals)

Date: /FEB/2022

Attested

(M.P.Sisodiya)
Superintendent (Appeals)
Central Excise, Ahmedabad

By Regd. Post A. D

To,
M/s. Milestone Tradelinks Pvt. Ltd.,
203, Anand Milan Complex,
Opp. Navrangpura Jain Derasar,
Navrangpura, Ahmedabad-380009

[formerly known as M/s. Vyom Tradelink Pvt. Ltd.,
10th Floor, Heritage Tower,
Besides Gujarat Vidyapith,
Usmanpura, Ahmedabad-380014]

Copy to :

1. The Pr. Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST and Central Excise, Commissionerate:Ahmedabad-North.
3. The Deputy /Asstt. Commissioner, Central GST, Division-VII, Commissionerate:Ahmedabad-North.
4. The Deputy/Asstt. Commissioner (Systems), Central Excise, Commissionerate:Ahmedabad-North.
5. Guard file
6. PA File