आयुक्त का कार्यालय,
केंद्रीय जी. एस. टी. एवं
केंद्रीय उत्पाद शुल्क ,अहमदाबाद – उत्तर,
कस्टम हॉउस, प्रथम तल,
नवरंगपुरा ,अहमदाबाद- 380009

OFFICE OF COMMISSIONER
CENTRAL GST & CENTRAL EXCISE,
AHMEDABAD- NORTH
CUSTOM HOUSE, 1ST FLOOR,
NAVRANGPURA, AHMEDABAD-380009

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निबन्धित पावती डाक द्वारा/By R.P.A.D
फा.सं./F.No. STC/15-314/OA/2021

DIN-20240264WT000000F433
आदेश की तारीख़/Date of Order: - 07.02.2024
जारी करने की तारीख़/Date of Issue :- 07.02.2024

द्वारा पारित/Passed by:- लोकेश डामोर /*Lokesh Damor*
अपर आयुक्त / *Additional Commissioner*

मूल आदेश संख्या / Order-In-Original No. 75/ADC/ LD /2023-24

जिस व्यक्ति (यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती हैI
This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरूद्ध अपील ,इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी ,अहमदाबाद 380015–को प्रारूप संख्या एस टी –४ (ST–4) में दाखिल कर सकता है। इस अपील पर रू. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form ST-4 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त (अपील) के समक्ष नियमानुसार पूर्व जमा के धनराशी का प्रमाण देना आवश्यक है ।

An appeal against this order shall lie before the Commissioner (Appeal) on giving proof of payment of pre deposit as per rules.

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एस टी –४ (ST–4) में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति।
(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरूद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू .5) 00. पांच रूपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form एस टी –४ (ST–4) in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(1) Copy of accompanied Appeal.
(2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.5.00.

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice No. DGGI/AZU/Gr-D/36-97/2021-22 dated 28.10.2021 issued to M/s. Seacoast Logistics & Marine Infrastructure, 13, Chandrodaya Society, Opp. Mohanlal s Mithaiwala, Near Sardar Patel Stadium, Navrangpura, Ahmedabad, Gujarat-380014.

BRIEF FACTS OF THE CASE :-

M/s Seacoast Logistics & Marine Infrastructure, a partnership firm, (hereinafter referred to as "M/s SLMI" for sake of brevity) 13, Chandrodaya society, Opp. Mohanlal s Mithaiwala, Besides Sardar Patel, Navjivan, Ahmedabad, holding Service Tax Registration No. AAXFA5094RSD001 are engaged in providing service viz. Cargo handling Service, Clearing & Forwarding Agent Services and Custom House Agent Service.

2.1 As per the specific intelligence / information received in Directorate General of GST Intelligence, Ahmedabad Zonal Unit (hereinafter referred to as "DGGI" for sake of brevity), it was revealed that M/s SLMI had a secret place of business located at 8, Sumanglam society, Behind Asia School Opp. Drive inn Cinema, Drive Inn Road, Ahmedabad. On cross verification with the ACES system it was confirmed that the said secret place was not declared to the department as an additional place of business by M/s SLMI. The address on which the said secret place was located was 8, Sumanglam society, Behind Asia School Opp. Drive inn Cinema, Drive Inn Road, Ahmedabad. Therefore, in order to verify the information received in respect of M/s Seacoast Logistics & Marine Infrastructure, inquiry was initiated under Search mode on 25.06.2020 by DGGI.

2.2. Search of premises located at 8, Sumanglam society, Behind Asia School Opp. Drive inn Cinema, Drive Inn Road, Ahmedabad was conducted under proper panchanama dated. 25.06.2021 and incriminating documents were withdrawn from the said premises under reasonable belief that the same would be required for further investigation of the case. During the scrutiny of the documents withdrawn under panchanama dated. 25.06.2020, two invoices were found issued by M/s Martrade Gulf Logistics FZCO, Dubai bearing No. 905a dated 15.03.2017 and bearing No.Nil dated. 17.05.2017 evidencing receipt of service of hiring of vessels from M/s Martrade Gulf Logistics FZCO, Dubai on payment of USD 4,20,010/- and USD 70,000/- respectively.

2.3 M/s SLMI submitted the copy of Balance sheet for the relevant period. During the inquiry of the case, Bank statement of Account No. 00051309000016 maintained at The Mehsana Urban Co-op Bank Ltd. C.G. Road, Ahmedabad was also called for from the bank for the period 01.04.2016 to 30.06.2017. The analysis of the bank statement revealed that payment of an amount of Rs. 3,42,83,490/- has been made in foreign currency viz. USD through HDFC as detailed below :-

Sr. No.	Date of Payment	Payment in convertible INR. (in Rs.)
01.	09.03.2017	15277737
02.	10.05.2017	9851753
03.	23.05.2017	3284235
05.	29.05.2017	3274210
07.	07.06.2017	2595555
Total:-		**3,42,83,490**

2.4 M/s SLMI also submitted a copy of purchase / sales ledger Account of M/s Martrade gulf Logistics FZCO for the period 01.04.2016 to 31.03.2018 where like-wise payment was found recorded

3.1 Scrutiny of documents seized during search proceeding from the secret premises revealed that M/s. SLMI is a partnership firm and Shri Utsav Ajay Patel, Shri Akshay Patel and Shri Sameer Amit Shah are the partners in the firm. M/s SLMI is engaged in providing services viz. 1. Transportation of Goods by Coastal Shipping 2. Transportation of Goods by Road Service and they are holding Service Tax Registration No. AAXFA5094RSD001 from 28.03.2017. Scrutiny of statutory records viz. Balance Sheet and ledger for April 2016 to June, 2017 revealed that M/s SLMI has hired vessels from M/s Martrade Gulf Logistics FZCO for providing service of Transportation of goods by Coastal Shipping which falls under the category of reverse charge where recipient of service is required to pay service tax as applicable in terms of Notification No. 30/2012-ST dated. 20.06.2012 as amended.

3.2 Scrutiny of ST-3 returns revealed that M/s. SLMI had filed ST-3 return for the period October-March, 2016-17 on 29.04.2017 which is well within the due date of filing the return. However, the ST-3 return for the period April-September, 2017-18 was filed on 04.04.2019 instead of last date of filing the said return 15.08.2017, after a delay of twenty months. Scrutiny of statutory returns i.e. ST-3 as detailed above, revealed that M/s. SLMI had not paid service tax under reverse charge under Notification No. 30/2012-ST dated. 20.06.2012 as amended during the period of October 2016 to June, 2017.

4. In his statement dated 29.06.2020, Shri Sameer Amit Shah, Partner of M/s. SLMI stated that M/s. SLMI were engaged in providing service viz. "Transport of Goods by Coastal Shipping" & "Transport of goods by road, Service" that; they had service Tax Registration bearing No. AAXFA5094RSD001 obtained on 28.03.2017; Shri Utsav Ajay Patel, Shri Akshay Patel are other two partners of the firm that; the work related to finance, tendering, execution of works, taxation etc. were looked after by him. He further stated that they had not declared address viz. 8, Sumanglam Society, Behind Asia School, Opp. Drive Inn Cinema, Drive Inn Road, Ahmedabad as additional place of business; M/s. SLMI was providing the service viz. Transport of Goods by Coastal shipping since, March, 2017 that; they had hired vessels from M/s Martrade Gulf Logistics FZCO and M/s Cosmos Shippers who were based in Dubai. That their firm had paid amount to M/s Martrade Gulf Logistics FZCO during the period of March, 2017 to June, 2017 however, they had not paid any service tax under reverse Charge in terms of Notification No. 30/2012-ST dated. 20.06.2012 as amended.

5. In his statement dated 12.10.2021, Shri Sameer Amit Shah, Partner of M/s SLMI produced copy of invoices issued by M/s Martrade Gulf Logistics FZCO, Dubai bearing No. 905a and Nil dated 15.03.2017 and 17.05.2017 respectively, which was proof of hiring of vessels wherein payment of USD 4,20,010/- and USD 70,000/- respectively was made. Further, he stated that they had made a payment of Rs. 3,42,83,489/- for hiring of foreign vessels that; payment made could be ascertained from their bank statement of A/c No. 00051309000016 maintained at the Mehsana Urban Co-operative Bank Ltd. that; they accepted the liability of Service Tax of Rs. 51,42,523/- @15% on consideration of Rs.3,42,83,489/- (Hiring of Vessels) during March, 2017 to June, 2017 under reverse Charge in terms of Notification No. 30/2012-ST dated 20.06.2012 as amended.

6.1. M/s. SLMI had availed hiring of goods services from out of India by way of hiring of vessels from M/s Martrade Gulf Logistics FZCO, Dubai, invoices bearing No. 905a dated 15.03.2017 and bearing No. Nil dated. 17.05.2017 evidencing receipt of service of hiring of vessels from M/s Martrade Gulf Logistics FCO, Dubai on payment of USD 4,20,010/- and USD 70,000/- respectively. The said service viz. Hiring of goods is defined under Section 66E(f) of the Finance Act, 1944; however, Section 68(2) of the Finance Act, 1994, and rules made thereunder, empowered the Central Government to notify such services, on which the liability to pay service tax, to the extent specified, shall be shifted from the service provider to the service recipient. This is known as Reverse Charge Mechanism (RCM). Notification No. 30/2012-ST dated 20-06-2012 has been issued which covers the said service as *"(B) provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory"* and shifts full (100%) liability of service tax on the service receiver/ recipient.

6.2 As per financial statement i.e. Audited Balance Sheet, expense ledger and Bank statement provided by M/s SLMI for the financial year, 2017-18 (Up to June, 2017), it was noticed that, they had received hiring of goods Services and had made payment towards the Hiring of Vessels to M/s Martrade Gulf Logistics FZCO, Dubai. The details are as tabled below and considering the abatement @ Nil for the period of March, 2017 to June, 2017 as mentioned here in above para the service tax liability worked out as per Notification No. 26/2012 ST dated 20.06.2012 and amended is as under:-

(As per Bank Statement) **(Amount in Rs.)**

Sr. No.	**Date of Payment**	**Payment in convertible INR.**	**Rate of Service Tax**	**Amount of Service Tax Rs.**
01.	09.03.2017	15277737	15	2291661
02.	10.05.2017	9851753	15	1477763
03.	23.05.2017	3284235	15	492635
05.	29.05.2017	3274210	15	491131
07.	07.06.2017	2595555	15	389333
Total:-		**34283490**		**5142523/-**

6.3. It appeared that M/s SLMI, for the period from October, 2016 to June, 2017, had not disclosed amount of hiring charges paid by them to M/s Martrade Gulf Logistics FZCO, Dubai and therefore, had suppressed the material facts from the department. Thus, as per financial records for the period from October, 2016 to June, 2017, it appeared that M/s SLMI had paid the amount of Rs. 3,42,83,490/- towards hiring of Vessels expenses on which service tax liability under Reverse Charge Mechanism for receiving hiring of goods services comes to Rs. 51,42,523/-. Thus, M/s SLMI had not paid service tax to the tune of Rs. 51,42,523/-under Hiring of goods under Reverse Charge mechanism, which was liable to be demanded and recovered from M/s. SLMI by invoking extended period of five years under first proviso to sub-section (1) of Section 73 of Finance Act, 1994 along with interest at the prescribed rate under Section 75 of the Finance Act, 1994 and had also rendered themselves liable for penal action under Section 78 (1) of Finance Act, 1994 read with section 174 of CGST Act, 2017.

6.4. Thus, in view of the above, it appeared that, "service" means any activity carried out by a person for another for consideration, and includes a declared service. In above case, it appeared that M/s. SLMI had availed the Services of hiring of vessels and the instant case is covered under the ambit of 'service' and the same is liable to service tax.

6.5. M/s. SLMI had suppressed the values of services received by them namely, "Transport of Goods by Coastal Shipping", "Transport of goods by road, Service" and "Hiring of goods" during the period from October, 2016 to June, 2017 in the periodical ST-3 returns filed by them. Thus, they had evaded the payment of applicable service tax on such services by resorting to suppression of the value of such services. The quantum of value of the individual services suppressed by M/s SLMI and the service tax so evaded during the period from October, 2016 to June, 2017 is as under:-

(As per Bank Statement) **(Amount in Rs.)**

Sr. No.	**Date of Payment**	**Payment in convertible INR.**	**Rate of Service Tax**	**Amount of Service Tax Rs.**
01.	09.03.2017	15277737	15	2291661
02.	10.05.2017	9851753	15	1477763
03.	23.05.2017	3284235	15	492635
05.	29.05.2017	3274210	15	491131
07.	07.06.2017	2595555	15	389333
Total:-		**34283490**		**5142523/-**

6.6. Thus, M/s SLMI had suppressed a net value of Rs. 3,42,83,490/- of the aforesaid services upon which they had evaded payment of service tax of Rs. 51,42,523/- and therefore, it appeared that the same is required to be recovered under the provisions of Finance Act, 1994 along with applicable interest and penalty.

7. The provisions of repealed Finance Act, 1994 have been saved vide Section 174 (2) of the CGST Act, 2017 and therefore the provisions of the said repealed act and Rules are enforced for the purpose of demand of Tax, Interest etc. and imposition of penalty under this notice.

8. Miscellaneous Transitional Provisions are contained in Section 142 (8) (a), CGST Act, 2017, which reads as *"where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act."*

9.1. It is pertinent to mention here that the system of self-assessment is in vogue in respect of Service Tax. In the scheme of self-assessment, the department comes to know about the service rendered and payment made only during the scrutiny of the statutory returns filed by the service providers. Therefore, it places greater onus on the assessee to comply with higher standards of disclosure of information in the statutory returns. It is seen from the facts that have emerged during the investigation of the instant case that M/s SLMI had suppressed their actual provision of services by way of not

assessing Service Tax properly, not declaring the said service viz. Hiring of goods, availed by them, in their Service Tax Return ST-3 for relevant period, not made payment of Service Tax under RCM with an intent to evade payment of tax and failed to disclose the above details in their ST-3 Returns during the aforesaid period. Thus, they had suppressed the material facts from the Department by not disclosing in their ST-3 Returns, the fact about providing such services. This appeared to have been done intentionally so as not to bring their activities to the notice of the Department, though they were registered for providing various taxable services, as discussed above. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax behavior. The responsibility of the taxpayer to voluntarily make information disclosures is much greater in a system of self-assessment. In this case, evaluation of tax behavior of M/s SLMI showed intent to evade payment of service tax by being well aware of the unambiguous provisions of the erstwhile Finance Act, 1994 and Rules made thereunder, and further failed to disclose to the department at any point of time, regarding the non-payment of service tax under reverse charge mechanism, during the period from 01.04.2017 to 30.06.2017. But for the investigation proceedings conducted by DGGI, these facts would have not come to light. In this regard, it may not be out of place to highlight here the observations of the Hon'ble Apex Court in the case of Rajasthan Spinning and Weaving Mills / High Court of Gujarat at Ahmedabad in Tax Appeal No. 338 of 2009 in the case of Commissioner of Central Excise, Surat-I Vs. Neminath Fabrics Pvt. Ltd. dated 22.04.2010 regarding applicability of the extended period in different situations.

9.2. It may be mentioned here that M/s SLMI had failed to declare actual service in the ST-3 Returns filed by them during the aforesaid period. Further, M/s SLMI had not claimed any exemption for the said charges and provision of the 'taxable services' during the aforesaid period in the ST-3 Returns, nor they had sought any specific clarification from the jurisdictional Service Tax assessing authorities regarding the applicability of Service Tax on the services of the same covering the period of this notice. In view of the specific omissions and commissions as elaborated earlier, it is apparent, that M/s SLMI had deliberately suppressed the facts of provision of the 'Taxable Service' from the service tax department during the said period. Consequently, this amounts to mis-declaration and willful suppression of facts with the deliberate intent to evade payment of Service Tax. The non-payment of Service Tax on the amounts so paid for receiving Hiring of vessels services by M/s Seacoast Logistics & Marine Infrastructure which appeared to be the 'taxable service' under RCM, came to the knowledge of the DGGI only due to specific investigations carried out as spelt out earlier. Therefore, the extended period of limitation as envisaged under proviso to Section 73(1) of the erstwhile Finance Act, 1994 appeared to be rightly invokable to demand Service Tax for the period April, 2016 and June, 2017.

10. The last date for filing ST-3 Returns for the period from October-2016 to March-2017 was 30.04.2017. However, the taxpayer had filed their return on 29.04.2017. Hence, the last date of issuance of Show Cause Notice, after invoking extended period was 28.04.2022.

11. Thus, the investigation revealed that M/s SLMI had evaded Service tax leviable on Hiring of Vessels service by deliberately suppressing the actual provision of "taxable services" received by them from the above mentioned vendors, from Service Tax department and evaded Service Tax to the tune of Rs. 51,42,523/- during the period 01.10.2016 to 30.06.2017.

12. In light of the facts discussed hereinabove and the material evidences available on records, it was further revealed that M/s SLMI had contravened the following provisions of Chapter V of the Finance Act, 1994 and the Service Tax Rules, 1994 with intent to evade payment of Service Tax in respect of "taxable Services" as defined under the provisions of Section 65B (51) of Finance Act, 1994, provided by them to their service receivers during the period from 01.10.2016 to 30.06.2017:-

(i) Section 67 of the Finance Act, 1994 inasmuch as they had failed to determine the net taxable value of taxable service and declared the same to the department.

(ii) Section 68(2) of the Finance Act, 1994 and Notification. No. 30/2012 ST as amended inasmuch as they failed to discharge their service tax liability under the reverse charge mechanism.

(iii) As per Section 70 of the Finance Act, 1994, every person liable to pay Service Tax was required to himself assess the tax due on the services provided by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all materials facts in ST-3 Returns. M/s. SLMI had not disclosed full, true and correct information about the value of the service provided/received liable for payment under RCM by them. Thus, it appeared that there was a deliberate withholding of essential and material information from the department about the taxable value. It appeared that all this material information had been concealed from the department deliberately, consciously and purposefully to evade payment of Service Tax. Therefore, in this case all essential ingredients exist to invoke the extended period under proviso to Section 73 (1) of the Finance Act, 1994 to demand the Service Tax not assessed/paid.

13. All above acts of contravention constitute an offence of the nature as described under the provision of Section 77 of the Finance Act, 1994, rendering themselves liable to penalty under Section 77 of the Finance Act, 1994, ibid, for failing to furnish proper periodical returns in form ST-3 and also as described under the provisions of Section 76 and/or 78 of the Finance Act, 1994, rendering themselves liable to penalty under Section 76 and/or 78, of the Finance Act, 1994, ibid, for suppression and mis-declaration of actual provision of taxable services provided by them to their various Service recipients with intent to evade payment of Service Tax leviable thereon.

14. M/s Seacoast Logistics & Marine Infrastructure, in spite of having knowledge of the various provisions of Service Tax, had not paid the applicable Service Tax amount to the government at appropriate time. They had never informed the Service Tax department about the actual provision of taxable services so received by them during the relevant time and they had also not shown the aforesaid actual provision of taxable service received by them, in respective ST-3 returns filed by them at the relevant period. M/s Seacoast Logistics & Marine Infrastructure had thus, willfully suppressed the actual provision of taxable service received by them with an intent to evade the Service Tax. It, thus, appeared that M/s Seacoast Logistics & Marine

Infrastructure, as a service recipient, have deliberately suppressed the actual provision of the taxable services received by them and failed to determine and pay the due Service Tax with an intention to evade payment of Service Tax in contravention of the various provisions of the Finance Act, 1994 and Rules made thereunder, as discussed herein above. Hence, the extended period of five years, as provided in proviso of sub-section (1) of Section 73 of Finance Act, 1994 is invokable for demanding the Service Tax in the subject matter. Accordingly, an amount of Service Tax to the tune of Rs. 51,42,523/- leviable on Service received by them from their service provider i.e. Hiring of goods during the period from 01.10.2016 to 30.06.2017, is required to be recovered from them, by invoking extended period of five years, under proviso to sub-section (1) of Section 73 of Chapter V of the Finance Act, 1994 along with Interest at applicable rate provided under Section 75 of the Finance Act,1994. The said act on the part of the assessee made them liable to penalty under Section 77 and 78 (1) of the Finance Act, 1994.

15. M/s Seacoast Logistics & Marine Infrastructure, were issued Show Cause Notice No. DGGI/AZU/Gr-D/36-97/2021-22 dated 28.10.2021 and having DIN 20211DWW300009959BA, asking them to show cause as to why:-

(a) Service Tax amount of **Rs. Rs. 51,42,523/- (Rs. Fifty one Lakhs Forty Two Thousand Five Hundred and Twenty Three only)** leviable on the taxable service chargeable to tax under the reverse charge mechanism during the period from **01.10.2016 to 30.06.2017** should not be demanded and recovered from them under proviso to Sub-Section (1) of Section 73 of Finance Act,1994 by invoking extended period of five years.

(b) Interest at the applicable rates on the amount of service tax payable on the amount, as mentioned in (a) above, should not be recovered from them under the provisions of Section 75 of Finance Act,1994;

(c) Penalty should not be imposed upon them under Section 77 of Finance Act, 1994 for non-payment of service tax by due dates in contravention of the provisions of Section 68 of Finance Act, 1994 and the Rules made there under;

(d) Penalty should not be imposed upon them under sub-Section (1) of Section 78 of the Finance Act, 1994 for the above-mentioned contraventions;

DEFENCE REPLY

16. In the Show Cause Notice issued to M/s. SLMI, they were called upon to show cause within 30 days of receipt of the Show Cause Notice. However, they did not furnish any written submission/reply in their defence until now.

PERSONAL HEARING

17. Personal Hearing in this case has been granted to M/s. SLMI on 16.02.2023, 16.03.2023, 28.03.2023, 17.04.2023, 10.08.2023, 08.09.2023 and 11.10.2023. However, neither M/s. SLMI nor their authorised representative attended for P.H. On verification with the data of Postal Department, it was

noticed that the P.H. Notices were duly delivered in their premises however the assessee did not turned up for P.H. deliberately, therefore, I proceed with the adjudication process on the basis of available records and on the merits of the case.

DISCUSSION AND FINDINGS

18. The proceedings under the provisions of the Finance Act, 1994 and Service Tax Rules, 1994 framed there under are saved by Section 174(2) of the Central Goods and Service Tax Act, 2017 and accordingly I am proceeding further.

19. I have carefully gone through the records of the case and the facts available on record. It was noticed that seven opportunities of personal hearing were given to M/s. SLMI, however, they have not availed the same to defend their case. Further, they have also not filed any reply to the Show Cause Notice issued to them in this regard. Therefore, I am proceeding to decide the case ex-parte based upon the records available with this office and on merits of the case.

20. In this connection, I find that Hon'ble Supreme Court, High Courts and Tribunals, in several judgments/decision, have held that ex-parte decision will not amount to violation of principles of Natural Justice, when sufficient opportunities for personal hearing have been given for defending the case. In support of the same, I rely upon the following judgments/orders as follows:-

a) Hon'ble High Court of Kerala in the case of UNITED OIL MILLS Vs. OLLECTOR OF CUSTOMS & C. EX., COCHIN reported in 2000 (124) E.L.T. 53 (Ker.), has observed that;

"Natural justice - Petitioner given full opportunity before Collector to produce all evidence on which he intends to rely but petitioner not prayed for any opportunity to adduce further evidence - Principles of natural justice not violated.

(Emphasis Supplied)"

b) Hon'ble High Court of Calcutta in the case of KUMAR JAGDISH CH. SINHA Vs. COLLECTOR OF CENTRAL EXCISE, CALCUTTA reported in 2000 (124) E.L.T. 118 (Cal.) in Civil Rule No. 128 (W) of 1961, deciding on 13-9-1963, has observed that;

"Natural justice - Show cause notice - Hearing - Demand - Principles of natural justice not violated when, before making the levy under Rule 9 of Central Excise Rules, 1944, the assessee was issued a show cause notice, his reply considered, and he was also given a personal hearing in support of his reply - Section 33 of Central Excises & Salt Act, 1944. - It has been established both in England and in India [vide N.P.T. Co. v. N.S.T. Co. (1957) S.C.R. 98 (106)], that there is no universal code of natural justice and that the nature of hearing required would depend, inter alia, upon the provisions of the statute and the rules made thereunder which govern the constitution of a particular body. It has also been established that where the relevant statute is silent, what is required is a minimal level of hearing, namely, that the statutory authority must 'act in good faith and fairly listen to both sides' [Board of Education v. Rice, (1911) A.C. 179] and, "deal with the question referred to them without bias, and give to each of

the parties the opportunity of adequately presenting the case" [Local Govt. Board v. Arlidge, (1915) A.C. 120 (132)]. [para 16]

(Emphasis supplied)"

(c) Hon'ble High Court of Delhi in the case of SAKETH INDIA LIMITED Vs. UNION OF INDIA reported in 2002 (143) E.L.T. 274 (Del.)., has observed that:

"Natural justice - Ex parte order by DGFT - EXIM Policy - Proper opportunity given to appellant to reply to show cause notice issued by Addl. DGFT and to make oral submissions, if any, but opportunity not availed by appellant - Principles of natural justice not violated by Additional DGFT in passing ex parte order - Para 2.8(c) of Export-Import Policy 1992-97 - Section 5 of Foreign Trade (Development and Regulation) Act, 1992.

(Emphasis Supplied)"

(d) The Hon'ble CESTAT, Mumbai in the case of GOPINATH CHEM TECH. LTD Vs. COMMISSIONER OF CENTRAL EXCISE, AHMEDABAD-II reported in 2004 (171) E.L.T. 412 (Tri. - Mumbai), has observed that;

"Natural justice - Personal hearing fixed by lower authorities but not attended by appellant and reasons for not attending also not explained - Appellant cannot now demand another hearing - Principles of natural justice not violated. [para 5]

(Emphasis Supplied)"

(e) The Hon'ble Supreme court in the case of F.N. ROY Versus COLLECTOR OF CUSTOMS, CALCUTTA AND OTHERS reported in 1983 (13) E.L.T. 1296 (S.C.)., has observed as under:

"Natural justice — Opportunity of personal hearing not availed of—Effect — Confiscation order cannot be held mala fide if passed without hearing. - If the petitioner was given an opportunity of being heard before the confiscation order but did not avail of, it was not open for him to contend subsequently that he was not given an opportunity of personal hearing before an order was passed. [para 28]

(Emphasis Supplied)"

(f) The Hon'ble Supreme Court in the matter of JETHMAL Versus UNION OF INDIA reported in 1999 (110) E.L.T. 379 (S.C.), has observed as under;

"7. *Our attention was also drawn to a recent decision of this Court in A.K. Kripak v. Union of India - 1969 (2) SCC 340, where some of the rules of natural justice were formulated in Paragraph 20 of the judgment. One of these is the well known principle of audi alteram partem and it was argued that an ex parte hearing without notice violated this rule. In our opinion this rule can have no application to the facts of this case where the appellant was asked not only to send a written reply but to inform the Collector whether he wished to be heard in person or through a representative. If no reply was given or no intimation was sent to the Collector that a personal hearing was desired, the Collector would be justified in thinking that the persons notified did not desire to appear before him when the case was to be considered and could not be blamed if he were to proceed on the material before him on the basis of the allegations in the show cause notice. Clearly he could not compel appearance before him and giving a further notice in a case like this that*

the matter would be dealt with on a certain day would be an ideal formality."

21. In the present case, I find that M/s. SLMI had hired vessels from M/s. Mrtrade Gulf Logistics FZCO, Dubai and paid an amount of Rs.3,42,83,489/- (amount in USD is USD 4,90,010 (4,20,010 + USD 70,000.)). However, they had not paid applicable Service Tax of Rs.51,42,523/- under reverse charge in accordance with the provisions of Notification No. 30/2012-ST dated 20.06.2012. This is the only issue before me that is to be decided.

22. Before deciding the matter, it is pertinent to discuss the relevant legal provisions applicable in the present case. I proceed to discuss legal provisions in subsequent paras.

22.1. I observe that after introduction of new system of taxation of services in negative list regime w.e.f. 01.07.2012, any activity carried out by a person for another person for a consideration is taxable service except those services specified in the negative list or exempt list by virtue of mega exemption notification or covered under exclusion clauses provided under the meaning of "service" as per Section 65B(44) of Finance Act, 1944. The term "Service" has been defined under Section 65B (44) of the Finance Act, 1994 ('Act') as follows:-

"service" means any activity carried out by a person for another for consideration, and includes a declared service"

22.2. As per the above definition of "service", it includes "declared service". The term declared service has been defined in Section 65B (22) of the Finance Act, 1994, which reads as *" 'declared service' means any activity carried out by a person for another person for consideration and declared as such under Section 66E"*. Declared services have been enumerated in Section 66E of the Finance Act, 1994. Clause (f) of the said Section provides that service in the nature of transfer of goods by way of hiring, leasing, licensing without transfer of right to use such goods, is a declared service. The said clause reads as follows:-

"transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods"

22.3. Section 65b (51) of Finance Act, 1994 defines the term "taxable service", which reads as *""taxable service" means any service on which service tax is leviable under section 66B"*. Section 66B is the charging section for levy of Service Tax, which reads as follows:-

"There shall be levied a tax (hereinafter referred to as the service tax) at the rate of Fourteen per cent.54 on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed".

22.4. Further, with effect from effect from 15th November 2015, Swachh Bharat Cess at the rate of 0.5% on all services was also leviable as per provisions of the Section 119 Finance Act, 2015. Also, with effect from 1.6.2016, Krishi Kalyan Cess was also leviable at the rate of 0.5% on all services as per Section 161 (Under Chapter VI) of the Finance Act, 2016.

22.5. Sub-section (2) of the Section 68 of the Finance Act, 1994 empowers the Central Government to notify services on which tax shall be payable by person so notified. The said sub-section is reproduced below:-

"(2) Notwithstanding anything contained in sub-section (1), in respect of such taxable services as may be notified106 by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section 66B107 and all the provisions of this Chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service."

22.6. In accordance with the power conferred in the Sub-section (2) of the Section 68 ibid. Notification No. 30/2015-ST has been issued by the Government which provides that Service Tax in respect of such notified services shall be payable by the persons so notified in the said notification. Relevant portion of the said notification is reproduced below:-

"I. The taxable services, -

(A) ***(i)*** *...;*

(ii) provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is, -

(a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;

(c) any co-operative society established by or under any law;

(d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;

(e) anybody corporate established, by or under any law; or

(f) ***any partnership firm whether registered or not under any law including association of persons;***

(iii) *...;*

(iv) *...;*

(v) *...;*

(B) provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory;

(II) *The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely: -*

Sl. No.	*Description of a service*	*Percentage of service tax payable by the person providing service*	*Percentage of service tax payable by the person receiving the service*
10	*in respect of any taxable services provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory*	*Nil*	*100%*

»

22.7. In accordance with the provisions of Notification No. 30/2012-ST dated 20.06.2012, where services are provided by person located in non-taxable territory to person located in taxable territory, Service Tax is required to be paid by person receiving the service.

22.8. Section 70 of the Finance Act, 1994 pertains to furnishing of returns. The said Section is reproduced below:-

> *"(1) Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency and with such late fee not exceeding twenty thousand rupees, for delayed furnishing of return, as may be prescribed. (2) The person or class of persons notified under sub-section (2) of section 69, shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed."*

22.9. Section 75 ibid provides for levy of interest for late payment of Service Tax. The said section reproduced below:-

> *"Interest on delayed payment of service tax. — Every person, liable to pay the tax in accordance with the provisions of section 68 or rules made thereunder, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette for the period by which such crediting of the tax or any part thereof is delayed :*
>
> *Provided that in the case of a person who collects any amount as service tax but fails to pay the amount so collected to the credit of the Central Government, on or before the date on which such payment is due, the Central Government may, by notification in the Official Gazette, specify such other rate of interest, as it may deem necessary :*
>
> *Provided further that in the case of a service provider, whose value of taxable services provided in a financial year does not exceed sixty lakh rupees during any of the financial years covered by the notice or during the last preceding financial year, as the case may be, such rate of interest, shall be reduced by three per cent. per annum."*

22.10. Section 77 ibid provides for imposition of penalty for certain offences. The said section is reproduced below:-

> *"77. Penalty for contravention of rules and provisions of Act for which no penalty is specified elsewhere. — (1) Any person, —*
>
> *"(a) who is liable to pay service tax or required to take registration, fails to take registration in accordance with the provisions of section 69 or rules made under this Chapter shall be liable to a penalty which may extend to ten thousand rupees;]*
>
> *(b) who fails to keep, maintain or retain books of account and other documents as required in accordance with the provisions of this Chapter or*

the rules made thereunder, shall be liable to a penalty which may extend to [ten thousand rupees];

(c) who fails to —

(i) furnish information called by an officer in accordance with the provisions of this Chapter or rules made thereunder; or

(ii) produce documents called for by a Central Excise Officer in accordance with the provisions of this Chapter or rules made thereunder; or

(iii) appear before the Central Excise Officer, when issued with a summon for appearance to give evidence or to produce a document in an inquiry, shall be liable to a penalty which may extend to [ten thousand rupees] or two hundred rupees for everyday during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance;

(d) who is required to pay tax electronically, through internet banking, fails to pay the tax electronically, shall be liable to a penalty which may extend to [ten thousand rupees];

(e) who issues invoice in accordance with the provisions of the Act or rules made thereunder, with incorrect or incomplete details or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to ten thousand rupees.

(2) Any person, who contravenes any of the provisions of this Chapter or any rules made thereunder for which no penalty is separately provided in this Chapter, shall be liable to a penalty which may extend to [ten thousand rupees."

22.10. Section 78 ibid provides for imposition of penalty for failure to pay service tax for reasons of fraud, etc. The said section is reproduced below:-

"78. Penalty for failure to pay service tax for reasons of fraud, etc. — (1) Where any service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under the proviso to sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty which shall be equal to hundred per cent. of the amount of such service tax :

Provided that in respect of the cases where the details relating to such transactions are recorded in the specified records for the period beginning with the 8th April, 2011 upto the date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty per cent. of the service tax so determined :

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 per cent. of such service tax

and proceedings in respect of such service tax, interest and penalty shall be deemed to be concluded;

(ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent. of the service tax so determined :

Provided also that the benefit of reduced penalty under the second proviso shall be available only if the amount of such reduced penalty is also paid within such period :

Explanation. — For the purposes of this sub-section, "specified records" means records including computerised data as are required to be maintained by an assessee in accordance with any law for the time being in force or where there is no such requirement, the invoices recorded by the assessee in the books of accounts shall be considered as the specified records.

(2) Where the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be, modifies the amount of service tax determined under sub-section (2) of section 73, then, the amount of penalty payable under sub-section (1) and the interest payable thereon under section 75 shall stand modified accordingly, and after taking into account the amount of service tax so modified, the person who is liable to pay such amount of service tax, shall also be liable to pay the amount of penalty and interest so modified.

(3) Where the amount of service tax or penalty is increased by the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be, over and above the amount as determined under sub-section (2) of section 73, the time within which the interest and the reduced penalty is payable under clause (ii) of the second proviso to sub-section (1) in relation to such increased amount of service tax shall be counted from the date of the order of the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be."

23. Having discussed the legal provisions, I now proceed to decide as to whether the provisions are applicable in the instant case and decide the matter on the basis of material available on record and on merits.

24. After going through the Show Cause Notice issued to M/s. SLMI, documents available on record and Shri Sameer Amit Shah's statements dated 29.06.2020 and 12.10.2021, the following observations are made:-

- M/s. SLMI are engaged in providing "Transportation of Goods by Coastal Shipping" and "Transportation of Goods by Road";
- They hire vessels from various entities located in India and outside India;
- They had hired vessels from M/s Martrade Gulf Logistics FZCO (located in Dubai, i.e. non-taxable territory) and M/s Martrade Gulf Logistics FZCO had issued invoices 905a dated 15.03.2017 for USD 4,20,010 and bearing No.Nil dated. 17.05.2017 for USD 70,000;
- M/s. SLMI had made payment to M/s Martrade Gulf Logistics FZCO in foreign currency amounting to Rs.3,42,83,489/- for hiring of vehicles.

25. I find that M/s. SLMI had hired vessels from M/s Martrade Gulf Logistics FZCO for consideration payable in foreign currency, i.e. USD. Accordingly, this activity meets the definition of "service" as given in Section 65B(44) of the Finance Act, 1994. Further, it is also covered in clause (f) of Section 66E ibid i.e. declared service. Accordingly, I find that the activity is "service". Further Section 66B provides levy of Service Tax on all services, other than those specified in negative list. I find that the services received by M/s. SLMI are not covered in negative list under Section 66D of the Finance Act, 1994 or any exemption notification. Further, Notification 30/2012-ST dated 20.06.2012 as amended provides that Service Tax in respect of services provided by person located in non-taxable territory to person located in taxable territory is payable by person receiving the service. In the present case M/s Martrade Gulf Logistics FZCO is located in Dubai, i.e. non-taxable territory and had provided services to M/s. SLMI, i.e. person located in taxable territory.

26. In view of the above, I find that M/s. SLMI were liable to pay Service Tax in respect of services received from M/s Martrade Gulf Logistics FZCO, i.e. hiring of vessel service, under reverse charge mechanism in accordance with the above provisions. Further, Shri Sameer Amit Shah, Partner of M/s. SLMI in his statement dated 12.10.2021, has accepted the liability of service tax of M/s. SLMI amounting to Rs.51,42,523/- (including cess) on payment of Rs.3,42,83,489/- made to M/s Martrade Gulf Logistics FZCO for the period from March 2017 to June 2017.

27. A taxable person is required to provide information/documents to the department as and when required. However, in this case M/s. SLMI failed to furnish/provide the required documents in support of their claim to prove that they are not liable to service tax under reverse charge being the service tax recipient. They were given multiple opportunities of being heard, however, they failed appear. Also they did not submit any documents proving that they are eligible for exemption from payment of service tax or abetment of value for the purpose of calculating service tax liability.

28. Further, M/s. SLMI had not claimed any exemption nor did they seek any clarification from the jurisdictional Service Tax assessing authorities regarding the applicability of Service Tax on the services received by them. In view of the specific omissions and commissions as elaborated earlier, it is apparent that M/s. SLMI had deliberately suppressed the facts of receiving services. This came to the knowledge of department only after investigation was initiated against M/s. SLMI by DGGI. Consequently, this amounts to mis-declaration and wilful suppression of facts with the deliberate intent to evade payment of Service Tax.

29. All the above acts of contravention of the various provisions of the Finance Act, 1994, as amended from time to time, and Rules framed there under, on the part of M/s. SLMI have been committed by way of suppression of facts with an intent to evade payment of service tax and, therefore, the service tax not paid is required to be demanded and recovered from them under the proviso to Section 73 (1) of the Finance Act, 1994, as amended from time to time, by invoking extended period of five years along with applicable interest. All these acts of contravention of the provisions of Section 67, 68(2) and 70 of the Finance Act, 1994, as amended from time, on part M/s. SLMI have

rendered themselves for penal action under the provisions of Section 77 and 78 of the Finance Act, 1994, as amended from time to time.

30. Further, as per Section 75 *ibid*, every person liable to pay the tax in accordance with the provisions of Section 68 *ibid*, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest. Since M/s. SLMI have failed to pay their Service Tax liabilities within the prescribed time limit, they are liable to pay the said amount along with interest. Thus, the said Service Tax is required to be recovered from the assessee along with interest under Section 75 of the Finance Act, 1994.

31. All above acts of contravention constitute an offence of the nature as described under the provision of Section 77 ibid. M/s. SLMI have rendered themselves liable to penalty under Section 77 of the Finance Act, 1994, for failure to pay Service Tax electronically as provided under Section 77 of the Service Tax Rules, 1994.

32. As far as imposition of penalty u/s.78 of Finance Act, 1994 is concerned, on perusal of the facts of the case and in view of the above discussion, I find that this is a fit case to levy penalty under section 78 of Finance Act, 1994 as M/s. SLMI failed to pay Service Tax with intent to evade the same as discussed in forgoing paras. It is also a fact that they had deliberately not shown the value of services received in their ST-3 Returns, with intent to evade the proper payment of service tax on its due date. Had the investigation not been conducted by DGGI, Service Tax evasion on the part of M/s. SLMI would not have come to the fore. They had never informed the Service Tax department about the actual receipt services from the person located in non-taxable territory and they had also not shown the same in respective ST-3 return filed by them. M/s. SLMI have thus, willfully suppressed information of receiving services from person located in non-taxable territory, with an intent to evade the Service Tax. Thus, M/s. SLMI deliberately suppressed value of services received from person located in non-taxable territory, from the Jurisdictional Service Tax Authorities and failed to determine and pay the applicable Service Tax with an intention to evade payment of Service Tax in contravention of the various provisions of the Finance Act, 1994 and Rules made thereunder, as discussed hereinabove. Hence I find that this is a fit case to impose penalty u/s.78 of Finance Act, 1994.

33. Further, the onus is on M/s. SLMI to prove that they are eligible for any exemption Notification. In this connection the Hon"ble Supreme Court of India in the case of Commissioner of Central Excise New Delhi Vs. Hari Chand Shri Gopal reported in 2010(260) ELT 3 (sc) clarified that the person claims exemption or concession has to establish that he is entitled to that exemption or concession. The relevant portion of the order is reproduced as under:-

> *"**22.** The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the Statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions*

must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption. In Novopan Indian Ltd. (supra), this Court held that a person, invoking an exception or exemption provisions, to relieve him of tax liability must establish clearly that he is covered by the said provisions and, in case of doubt or ambiguity, the benefit of it must go to the State. A Constitution Bench of this Court in Hansraj Gordhandas v. H.H. Dave - (1996) 2 SCR 253, held that such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption." . Here in the instant case the assessee failed to prove that they are eligible for the exemption Notifications.

34. The government has from the very beginning placed full trust on the service tax assessee so far as service tax is concerned and accordingly measures like self-assessments etc., based on mutual trust and confidence are in place. All these operate on the basis of honesty of the service tax assessee; therefore, the governing statutory provisions create an absolute liability, when any provision is contravened or there is a breach of trust, on the part of service tax assessee, no matter how innocently. Non-payment of service tax is utter disregard to the requirements of law and the breach of trust deposed on them which is outright act of defiance of law by way of suppression, concealments and non-furnishing value of services received from person located in non-taxable territory with intent to evade payment of service tax. All the above facts of contravention on the part of the service provider have been committed with an intention to evade the payment of service tax by suppressing the facts. Therefore, service tax of Rs.51,42,523 not paid by M/s. SLMI is required to be recovered from them under Section 73 (1) of Finance Act, 1994 by invoking extended period of five years under the proviso to Section 73(1) of the Finance Act, 1994.

35. Various Courts including the Hon'ble Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax behaviour. Moreover, the Hon'ble Apex Court in the case of Rajasthan Spinning and Weaving Mills / High Court of Gujarat at Ahmedabad in Tax Appeal No. 338 of 2009 in the case of Commissioner of Central Excise, Surat-I Vs. Neminath Fabrics Pvt. Ltd. dated 22.04.2010 has made the following observations regarding applicability of the extended period in different situations:-

"11. A plain reading of sub-section (1) of section 11A of the Act indicates that the provision is applicable in a case where any duty of excise has either not been levied/paid or has been short levied/short paid, or wrongly refunded, regardless of the fact that such non-levy etc. is on the basis of any approval, acceptance or assessment relating to the rate of duty or valuation under any of the provisions of the Act or Rules thereunder and at that stage it would be open to the Central Excise Officer, in exercise of his discretion to serve the show cause notice on the person chargeable to such duty within one year from the relevant date.

12. The Proviso under the said sub-section stipulates that in case of such non-levy, etc. of duty which is by reason of fraud, collusion, or any mis - statement or suppression of facts, or contravention of any provisions of the Act or the rules made there under, the provisions of sub-section (1) of section 11A of the Act shall have effect as if the words one year have been substituted by the words five years.

13. The Explanation which follows stipulates that where service of notice has been stayed by an order of a Court, the period of such stay shall be excluded from computing the aforesaid period of one year or five years, as the case may be.

14. Thus the scheme that unfolds is that in case of non-levy where there is no fraud, collusion, etc., it is open to the Central Excise Officer to issue a show cause notice for recovery of duty of excise which has not been levied, etc. The show cause notice for recovery has to be served within one year from the relevant date. However, where fraud, collusion, etc., stands established the period within which the show cause notice has to be served stands enlarged by substitution of the words one year by the words five years. In other words the show cause notice for recovery of such duty of excise not levied etc., can be served within five years from the relevant date.

15. To put it differently, the proviso merely provides for a situation where under the provisions of sub-section (1) are recast by the legislature itself extending the period within which the show cause notice for recovery of duty of excise not levied etc. gets enlarged. This position becomes clear when one reads the Explanation in the said sub-section which only says that the period stated as to service of notice shall be excluded in computing the aforesaid period of one year or five years as the case may be.

16. The termini from which the period of one year or five years has to be computed is the relevant date which has been defined in sub-section (3)(ii) of section 11A of the Act. A plain reading of the said definition shows that the concept of knowledge by the departmental authority is entirely absent. Hence, if one imports such concept in sub-section (1) of section 11A of the Act or the proviso thereunder it would tantamount to rewriting the statutory provision and no canon of interpretation permits such an exercise by any Court. If it is not open to the superior court to either add or substitute words in a statute such right cannot be available to a statutory Tribunal.

17. The proviso cannot be read to mean that because there is knowledge the suppression which stands established disappears. Similarly the concept of reasonable period of limitation which is sought to be read into the provision by some of the orders of the Tribunal also cannot be permitted in law when the statute itself has provided for a fixed period of limitation. It is equally well settled that it is not open to the Court while reading a provision to either rewrite the period of limitation or curtail the prescribed period of limitation.

18. The Proviso comes into play only when suppression etc. is established or stands admitted. It would differ from a case where fraud, etc. are merely alleged and are disputed by an assessee. Hence, by no stretch of imagination the concept of knowledge can be read into the provisions because that would tantamount to rendering the defined term relevant date nugatory and such an interpretation is not permissible.

19. The language employed in the proviso to sub-section (1) of section 11A, is clear and unambiguous and makes it abundantly clear that moment there is non-levy or short levy etc. of central excise duty with intention to evade payment of duty for any of the reasons specified thereunder , the proviso would come into operation and the period of limitation would stand extended from one year to five years. This is the only requirement of the provision. Once it is found that the ingredients of the proviso are satisfied, all that has to be seen as to what is the relevant date and as to whether

the show cause notice has been served within a period of five years therefrom.

20. Thus, what has been prescribed under the statute is that upon the reasons stipulated under the proviso being satisfied, the period of limitation for service of show cause notice under sub-section (1) of section 11A, stands extended to five years from the relevant date. The period cannot by reason of any decision of a Court or even by subordinate legislation be either curtailed or enhanced. In the present case as well as in the decisions on which reliance has been placed by the learned advocate for the respondent, the Tribunal has introduced a novel concept of date of knowledge and has imported into the proviso a new period of limitation of six months from the date of knowledge. The reasoning appears to be that once knowledge has been acquired by the department there is no suppression and as such the ordinary statutory period of limitation prescribed under sub-section (1) of section 11A would be applicable. However, such reasoning appears to be fallacious in as much as once the suppression is admitted, merely because the department acquires knowledge of the irregularities the suppression would not be obliterated.

21. It may be noticed that where the statute does not prescribe a period of limitation, the Apex Court as well as this Court have imported the concept of reasonable period and have held that where the statute does not provide for a period of limitation, action has to be taken within a reasonable time. However, in a case like the present one, where the statute itself prescribes a period of limitation the question of importing the concept of reasonable period does not arise at all as that would mean that the Court is substituting the period of limitation prescribed by the legislature, which is not permissible in law.

22. The Apex Court in the case of Rajasthan Spinning and Weaving Mills (supra) has held thus :

"From sub-section 1 read with its proviso it is clear that in case the short payment, non payment, erroneous refund of duty is unintended and not attributable to fraud, collusion or any willful mis -statement or suppression of facts, or contravention of any of the provisions of the Act or of the rules made under it with intent to evade payment of duty then the Revenue can give notice for recovery of the duty to the person in default within one year from the relevant date (defined in sub-section 3). In other words, in the absence of any element of deception or malpractice the recovery of duty can only be for a period not exceeding one year. But in case the non-payment etc. of duty is intentional and by adopting any means as indicated in the proviso then the period of notice and a priory the period for which duty can be demanded gets extended to five years."

23. This decision would be applicable on all fours to the facts of the present case, viz. when non-payment etc. of duty is intentional and by adopting any of the means indicated in the proviso, then the period of notice gets extended to five years."

36. In view of the above facts, the extended period is correctly invoked while issuing this Show Cause Notice.

37. In view of the above discussions and findings, I pass the following order.

ORDER

(i) I confirm the demand of Service Tax of **Rs. 51,42,523/-** (including Swachh Bharat Cess and Krishi Kalyan Cess) **(Rupees Fifty one Lakhs Forty Two Thousand Five Hundred and Twenty Three only)** on the taxable service chargeable to tax under the reverse charge mechanism

during the period from 01.10.2016 to 30.06.2017 as discussed in forgoing paras and order to recover the same from M/s Seacoast Logistics & Marine Infrastructure, under proviso to Sub-section (1) of Section 73 of Finance Act,1994;

(ii) I confirm the demand of Interest at the appropriate rate and order to recover from them for the period of delay of payment of service tax mentioned at (i) above under Section 75 of the Finance Act, 1994;

(iii) I impose penalty of Rs.10,000/- (Rupees Ten Thousand only) on M/s Seacoast Logistics & Marine Infrastructure under Section 77(1)(d) of the Finance Act, 1994;

(iv) I impose Penalty of **Rs. 51,42,523/- (Rupees Fifty one Lakhs Forty Two Thousand Five Hundred and Twenty Three only)**, under Section 78 of the Finance Act, 1994, as amended on M/s Seacoast Logistics & Marine Infrastructure. I further order that in terms of Section 78 (1) of the Finance Act, 1994 if M/s Seacoast Logistics & Marine Infrastructure pay the amount of Service Tax as determined at Sl. No. (i) above and interest payable thereon at (ii) above within thirty days of the date of communication of this order, the amount of penalty liable to be paid by M/s Seacoast Logistics & Marine Infrastructure, shall be twenty-five per cent of the penalty imposed subject to the condition that such reduced penalty is also paid within the period so specified.

38. Accordingly the Show Cause Notice bearing F.No. DGGI/AZU/Gr-D/36-97/2021-22 dated 28.10.2021 is disposed off.

(LOKESH DAMOR)
Additional Commissioner
Central GST & Central Excise
Ahmedabad North

F.No. STC/15-314/OA/2021 Dt:.07.02.2024

To,
M/s Seacoast Logistics & Marine Infrastructure,
13, Chandrodaya society,
Opp. Mohanlal s Mithaiwala,
Near Sardar Patel Stadium, Navrangpura,
Ahmedabad, Gujarat, 380014

Copy to:-

1. The Commissioner of CGST & C.Ex., Ahmedabad North.
2. The Deputy/Assistant Commissioner, Central Excise & CGST, Division-VII, Ahmadabad North.
3. The Superintendent, , C. Ex. & CGST, Range-II, Division-VII, Ahmedabad North
4. The Superintendent (Systems) CGST, Ahmedabad North, for uploading on website.
5. Guard File