



<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर/ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- oaahmedabad2@gmail.com</p>

निबन्धित पावती डाक द्वारा/By R.P.A.D
फा.सं./F.No. GST/15-20/OA/2022

DIN-20240264WT0000818847

आदेश की तारीख/Date of Order: - 22.02.2024
जारी करने की तारीख/Date of Issue :- 22.02.2024

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 85/ADC/ LD /GST/2023-24

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।
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इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 90 दिन के अन्दर आयुक्त (अपील), केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केंद्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप GST-APL-01 में दाखिल कर सकता है। इस अपील पर रु. 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 GST-APL-01 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within three months 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.

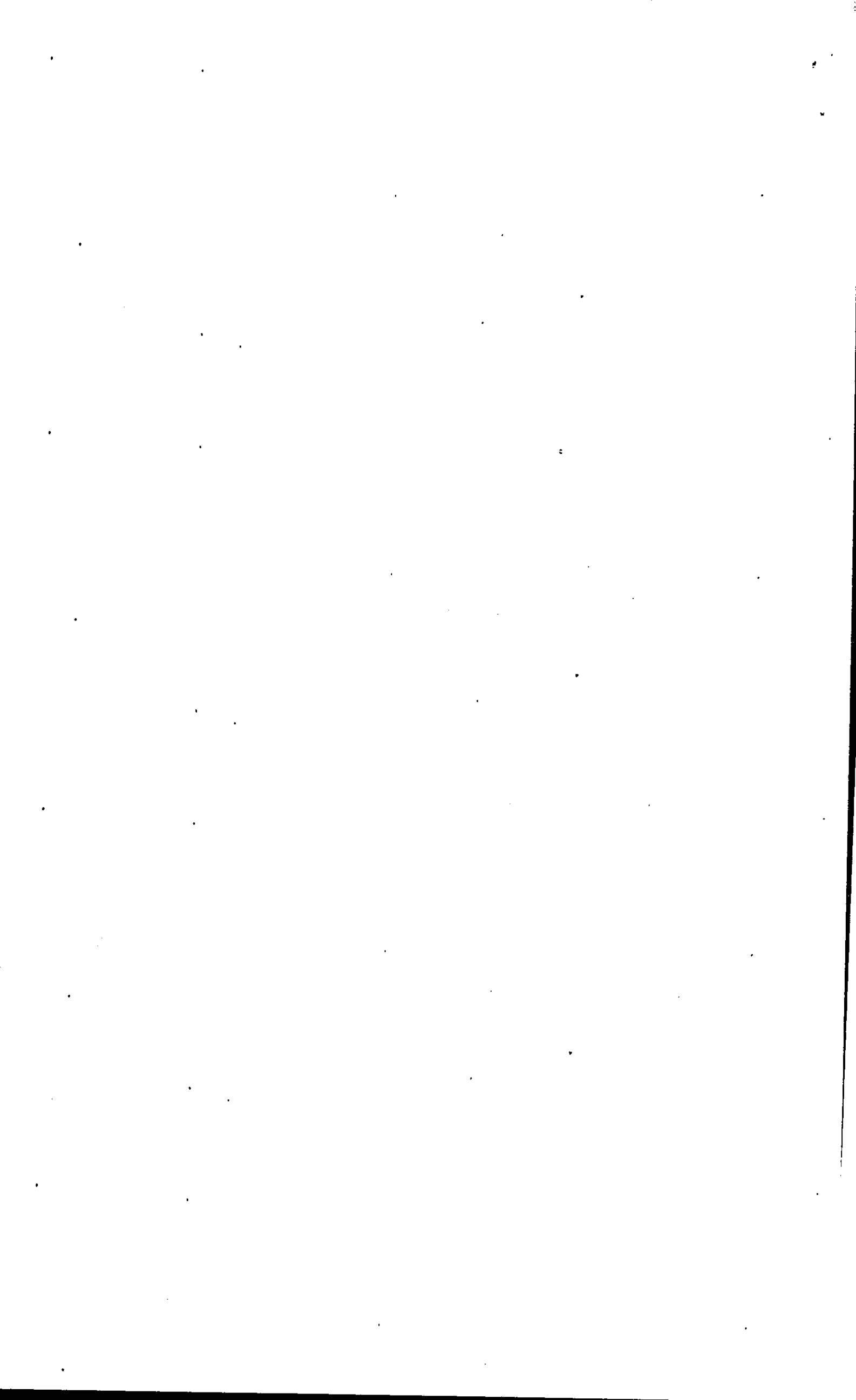
उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या GST-APL-01 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केंद्रीय जी. एस. टी. नियमावली, 2017 के नियम 108 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

- (1) उक्त अपील की प्रति।
- (2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form GST-APL-01 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 108 of CGST Rules, 2017. 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/36-181/2021-22 dated 31.03.2022 issued to M/s Seacoast Logistics & Marine Infrastructure., having GSTIN 24AAXFA5094R2ZF,13, Chandroday Co-Op Housing Society Ltd., 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, Chandroday Co Op Housing Society Ltd, Near Sardar Patel Stadium, Navrangpura, Ahmedabad, Gujarat, 380014, holding GST Registration No. 24AAXFA5094R2ZF are engaged in providing service 1. Transportation of Goods by Coastal Shipping 2. Transportation of Goods by Road Service 3. Cargo handling Service, 4. Clearing & Forwarding Agent Services and 5. Custom House Agent Service..

2. Specific information/intelligence was received by Directorate General of GST Intelligence, Ahmedabad Zonal Unit (hereinafter referred to as "DGGI" for sake of brevity) that M/s. SLMI was having 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 the 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. Search of premises located at 8, Sumanglam society, Behind Asia School Opp. Drive inn Cinema, Drive Inn Road, Ahmedabad was conducted under section 67 of CGST Act, 2017 in proper panchanama proceedings dated 25.06.2021 and incriminating documents were withdrawn from the said premises under reasonable belief that the same would require for further investigation of the case. Scrutiny of the documents withdrawn under panchanama dated 25.06.2020 and sales ledger submitted during the investigation revealed that M/s. SLMI had received service of hiring of vessels from M/s Martrade Gulf Logistics FCO, Dubai and M/s Cosmos Shippers LLC as well as they have supplied taxable services to various entities across the country.

3. Scrutiny of sales invoices and sales Ledger revealed that M/s SLMI had provided/supplied taxable services during the period from November, 2017 to March, 2020 but failed to declare the supply of services by filling Return under Section 39 of CGST Act, 2017 and to pay GST/IGST as applicable on said supply of service viz. coastal freight Service and clearing & forwarding services etc. During the said period, M/s SLMI had also availed hiring of vessels services from the Foreign Service providers. Month-wise value of taxable supply of services viz. coastal freight Service and clearing & forwarding services, on the basis of sales ledgers provided by M/s SLMI is detailed below:-

(Amount in Rs.)

Month	Services	Value of Taxable supply	IGST	CGST	SGST	Total GST
Nov-17	Handling 18%	12906000	0	1161540	1161540	2323080
Nov-17	Ocean Freight 18%	35400000	6372000	0	0	6372000
Dec-17	Demurage 18%	1848000	332640	0	0	332640
Dec-17	Handling 18%	3506250	631125	0	0	631125
Jan-18	Demurage 18%	1658555	0	149270	149270	298540
Jan-18	Handling 18%	3480662	0	313259	313259	626518

Jan-18	Ocean Freight 18%	15854040	0	1426864	1426864	2853728
Jan-18	Road Transportation 12%	47031	0	2821	2821	5642
Feb-18	Ocean Freight 18%	14619000	0	1315710	1315710	2631420
Mar-18	Agency 18%	460920	0	10125	10125	20250
Apr-18	Agency 18%	295460	0	6300	6300	12600
Apr-18	Ocean Freight 18%	26055000	0	2344950	2344950	4689900
Apr-18	Ocean Freight 5%	10003350	0	250084	250084	500168
May-18	Agency 18%	460920	0	10125	10125	20250
May-18	Ocean Freight 5%	4891000	0	122275	122275	244550
Jun-18	Agency 18%	443290.66	0	9452	9452	18904
Feb-19	Commission 18%	2138430	0	192459	192459	384918
Mar-19	Bunker 5%	15639158	0	368229	368229	736458
Mar-19	Ocean Freight 18%	1980000	0	178200	178200	356400
Mar-20	Bunker 5%	12158848	0	303971	303971	607942
	Total	163845915	7335765	8165634	8165634	23667033

4. Scrutiny of the purchase invoices and Hiring Ledger also revealed that M/s SLMI had not discharged their GST liability @ 5% on RCM basis on hiring of vessels from various overseas suppliers of service located in a non-taxable territory in terms of Notification No. 10/2017-IT(Rate) dated 28.06.2017 read with Notification No.8/2017-IT(Rate) dated 28.06.2017 for the said period.

4.1 Month wise hiring Charges paid to various overseas supplier of service (Hiring of Vessels) is detailed as below:-

Month	Hiring Charges Paid	Applicable IGST @ 5%
July, 2017	30889170	1544459
September, 2017	12139530	606976.5
December, 2017	25048270	1252414
April, 2018	52420830	2621042
Total:-	12,04,97,800/-	60,24,890/-

5.1. Scrutiny of documents seized during the search of the secret premises revealed that M/s Seacoast Logistics & marine Infrastructure 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 was engaged in providing services viz. 1. Transportation of Goods by Coastal Shipping 2. Transportation of Goods by Road Service 3. Cargo handling Service, 4. Clearing & Forwarding Agent Services and 5. Custom House Agent Service and they are holding GSTIN 24AAXFA5094R2ZF. Scrutiny of statutory records viz. sales ledger for July, 2017 to April, 2018 revealed that M/s. SLMI had hired vessels from various overseas suppliers of service viz. M/s Martrade Gulf Logistics FZCO and M/s Cosmos Shippers LLC, Dubai, for providing service of Transportation of goods by Coastal Shipping. The said hiring of vessels services from the overseas suppliers falls under the category of reverse charge where recipient of service is required to pay GST as applicable under the provisions of Notification No. 10/2017-IT(Rate) dated 28.06.2017 as amended.

5.2. Further, Inquiry in the case further revealed that M/s SLMI had not filed their monthly GST returns for the month of November, 2017 to March, 2020

and suppressed the facts from the department deliberately with an intention to evade the payment of GST on the service provided/received.

5.3 Scrutiny of Sales ledger also revealed that M/s SLMI had supplied taxable services viz. Handling Service, Road Transport Services, Ocean Freight Services etc. during the period November, 2017 to march, 2020 and collected GST as applicable but had failed to deposit the same to the Government account. Month wise supply of service and amount of GST Collected is as detailed as below:-

(Amount in Rs.)

Month	Services	Value of Taxable supply	IGST	CGST	SGST	Total GST
Nov-17	Handling 18%	12906000	0	1161540	1161540	2323080
Nov-17	Ocean Freight 18%	35400000	6372000	0	0	6372000
Dec-17	Demurage 18%	1848000	332640	0	0	332640
Dec-17	Handling 18%	3506250	631125	0	0	631125
Jan-18	Demurage 18%	1658555	0	149270	149270	298540
Jan-18	Handling 18%	3480662	0	313259	313259	626518
Jan-18	Ocean Freight 18%	15854040	0	1426864	1426864	2853728
Jan-18	Road Transportation 12%	47031	0	2821	2821	5642
Feb-18	Ocean Freight 18%	14619000	0	1315710	1315710	2631420
Mar-18	Agency 18%	460920	0	10125	10125	20250
Apr-18	Agency 18%	295460	0	6300	6300	12600
Apr-18	Ocean Freight 18%	26055000	0	2344950	2344950	4689900
Apr-18	Ocean Freight 5%	10003350	0	250084	250084	500168
May-18	Agency 18%	460920	0	10125	10125	20250
May-18	Ocean Freight 5%	4891000	0	122275	122275	244550
Jun-18	Agency 18%	443290.66	0	9452	9452	18904
Feb-19	Commission 18%	2138430	0	192459	192459	384918
Mar-19	Bunker 5%	15639158	0	368229	368229	736458
Mar-19	Ocean Freight 18%	1980000	0	178200	178200	356400
Mar-20	Bunker 5%	12158848	0	303971	303971	607942
	Total	163845915	7335765	8165634	8165634	23667033

5.4 From the fact narrated herein above, it is coming out that the M/s SLMI had supplied taxable services of **Rs. 16,38,45,915/-** during the period of November, 2017 to March, 2020 and collected GST of **Rs. 2,36,67,033/-** (CGST Rs.81,65,634/- SGST Rs.81,65,634 and IGST Rs. 73,35,765/-) for which they had neither filed their statutory returns nor they had paid the GST attributed to the said supply of service though they had collected the same from the recipients.

6.1 Shri Sameer Amit Shah, Partner of the said Taxpayer, in his statement dated 29.06.2020, stated that:-

- M/s **Seacoast Logistics & Marine Infrastructure** were engaged in providing service viz. "Transport of Goods by Coastal Shipping" & "Transport of goods by road, Service"
- Shri Utsav Ajay Patel, Shri Akshay Patel are other two partner of the firm
- The work related to finance, tendering, execution of works, taxation etc. are 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
- the taxpayer is providing the service viz. Transport of Goods by Coastal shipping since, March, 2017
- M/s SLMI had supplied taxable services of Rs.13,14,83,516/- during the period of November, 2017 till March, 2020 and collected an amount of Rs.2,36,67,033/- towards GST
- their firm had not paid amount of GST so collected to the government account
- they had hired vessels from M/s Martrade Gulf Logistics Fzco and M/s Cosmos Shippers, both were based in Dubai
- their firm had paid to M/s Martrade Gulf Logistics Fzco and M/s Cosmos Shippers LLC during the period of July, 2017 to April 2018
- they had paid an amount of Rs. 12,04,97,800/- to M/s Martrade Gulf Logistics FZCO Dubai and M/s Cosmos Shippers LLC Duai for hiring of vessels on various dates
- their firm had not paid any IGST under Reverse Charge mechanism as per Notification No. 10/2017
- they had not deposited the amount of GST to the Govt. Exchequer, even after charging and collection the same from their clients.

7.1. Investigation in the case revealed that M/s SLMI had provided taxable service viz. Coastal freight Service and clearing & forwarding services. However, they had neither filed monthly GSTR-1/GSTR-1M/ GSTR-3B return nor they had discharged/paid GST as applicable on the services provided by them during the month of November, 2017 to March, 2020 though they had collected GST from the recipients of the said services. M/s SLMI has supplied taxable services of **Rs. 16,38,45,915/-** during the period of November, 2017 to March, 2020 and collected GST of **Rs. 2,36,67,033/-** (CGST Rs.81,65,634/- SGST Rs.81,65,634 and IGST Rs. 73,35,765/-)

7.2. Investigation in the case and scrutiny of their purchase documents further revealed that M/s SLMI had also availed Hiring of Vessels services from the overseas suppliers. On the availment of said service by M/s SLMI, they had to discharged their GST liability @ 5% on RCM basis on hiring of vessels service availed from overseas suppliers located in a non-taxable territory during the period July, 2017 to April, 2018 under the provisions of Notification No. 10/2017-IT(Rate) dated 28.06.2017 read with Notification No.8/2017-IT(Rate) dated 28.06.2017. M/s. SLMI had availed services amounting to Rs. 12,04,97,800/- during the period July, 2017 to April, 2018 on which M/s. they had not paid GST of Rs.60,24,890/- under reverse charge.

7.3. After initiation of inquiry by DGGI, M/s SLMI accepted the violation/ contravention of the various provisions of CGST Act, 2017 and agreed to pay the outstanding liabilities of GST in their statement dated 02.07.2020. However, they failed to comply with their statement and neither they filed their monthly return nor they discharged their outstanding liability of GST. Hence, the outstanding liability was quantified under the provisions of Section 74 of CGST Act, 2017 amounting to total Rs. 2,96,91,933/- (CGST Rs. 81,65,634/- SGST Rs. 81,65,634/- IGST Rs. 73,35,765/-) ibid.

7.4. During the investigation, M/s. SLMI had voluntarily paid GST amounting to Rs. 16,78,261/- (CGST : Rs.6,70,923+ SGST Rs. 10,07,338/-) by utilizing ITC available in their ledger vide DRC-03 bearing debit entry no. DI2410200106513 dated 12.10.2020. The said amount of Rs. 16,78,261/- needs to be appropriated against outstanding liability of Rs. 2,96,91,933/-.

7.5. M/s SLMI had not discharged/paid outstanding liability of GST as calculated above, hence, they are require to pay the outstanding liability of GST as quantified ibid along with applicable interest under the provisions of Section 50 of CGST Act, 2017 and penalty under Section 74 of CGST Act, 2017.

8.1 The evasion of GST, by M/s. SLMI on the taxable supplies made by them, pertaining to 1. Transportation of Goods by Coastal Shipping 2. Transportation of Goods by Road Service 3. Cargo handling Service, 4. Clearing & Forwarding Agent Services and 5. Custom House Agent Service during the period November -2017 to March-2020, is quantified on the basis of sales ledgers submitted by taxpayer and same has been accepted by Shri Sameer Amit Shah, Partner of M/s. SLMI, as detailed in table at Para 3 above.

8.2. Scrutiny of the purchase invoices and Hiring Ledger also revealed that M/s SLMI had not discharged their GST liability @ 5% on RCM basis on hiring of vessels from various overseas suppliers of service located in a non-taxable territory in terms of Notification No. 10/2017-IT(Rate) dated 28.06.2017 read with Notification No.8/2017-IT(Rate) dated 28.06.2017. M/s. SLMI had availed service covered under RCM amounting to Rs. 12,04,97,800/- during the period July, 2017 to April, 2018 on which M/s. SLMI had not paid GST of Rs.60,24,890/- on Reverse Charge on hiring of vessels from overseas suppliers as detailed in table at Para 4.1 above.

8.4 As discussed hereinabove, M/s SLMI had not discharged their GST liability in spite of being collected from their buyers, resulting in the non-payment of. Rs. 2,36,67,033/- November -2017 to March-2020. They were engaged in supply of taxable services viz. Cargo handling Service, 4. Clearing & Forwarding Agent Services and 5. Custom House Agent Service during the period November -2017 to March-2020.

8.5 As discussed above, M/s. SLMI had also not discharged their GST liability, required to be paid under Reverse Charge mechanism on hiring of vessels from various overseas suppliers, resulting in the non-payment of Rs. 60,24,890/- for the period July, 2017 to April, 2018.

8.6. As discussed hereinabove, M/s. SLMI had evaded GST total amounting to Rs. 2,96,91,923/- (2,36,67,033/-+60,24,890/-) by not paying GST on supply of taxable services made by them during the period of November, 2017 to March, 2020 and GST liability under RCM on the services they had availed during the period July, 2017 to April, 2018 where GST under RCM was chargeable.

8.7 Based on the discussions made here-in-above, it appeared that M/s SLMI had provided out ward supply of service amounting to Rs. 16,38,45,915/- during the period from November, 2017 to March, 2020 and had not paid their GST liability on applicable GST rate, in spite of being collected from their buyers, resulting in the non-payment of. Rs. 2,36,67,033/-. Further, M/s.

SLMI had availed service covered under RCM amounting to Rs. 12,04,97,800/- during the period July, 2017 to April, 2018 on which M/s. SLMI had not paid GST of Rs.60,24,890/- on Reverse Charge on hiring of vessels from overseas suppliers under the provisions of Notification No. 10/2017 -IT(Rate) dated 28.06.2017. Thus M/s. SLMI have evaded total GST of Rs. 2,96,91,923/- (Rupees Two Crores Ninty Six Lakhs Ninty One Thousand Nine hundred and Twenty Three only) (IGST : 1,33,60,655/-, CGST : Rs. 81,65,634/-, SGST: Rs. 81,65,634/-). The said amount stood recoverable from them under Section 74 (1) of the CGST Act, 2017 read with Section 74 (1) of Gujarat GST Act, 2017 along-with applicable interest under Section 50 of CGST Act, 2017 read with Section 50 of Gujarat GST Act, 2017 and applicable penalty under Section 74 of the CGST Act, 2017 read with Section 74 of Gujarat GST Act, 2017.

9.1. It is pertinent to mention here that the system of self-assessment is in vogue in respect of GST. 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 of the emerged during the investigation of the instant case that M/s SLMI had suppressed their actual provision of supply/receipt of services by way of not assessing IGST/GST, not declaring the said service viz. Hiring of vessels from overseas, transportation of goods by coastal shipping availed/provided by them etc., by way of filling GST Return for relevant period, and by not making payment of GST on supply of services and receipt of services under RCM; with an intent to evade payment of tax and failed to disclose the above details by way of filling their statutory monthly return during the aforesaid period. Thus, they had suppressed the material facts from the Department by not filling their monthly return for the relevant period, the fact about providing such services. This appeared to be 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. Evaluation of tax behavior of M/s SLMI shows intent to evade payment of GST by being well aware of the provisions of IGST and CGST Act, 2017 read with SGST Act, 2017 and Rules made there under, failed to disclose to the department at any point of time, regarding the non-payment of GST on supply of service during November, 2017 to March, 2020 and on receipt of service under reverse charge mechanism during July, 2017 to April, 2018. M/s SLMI had deliberately not filed their Monthly return, the actual service provision rendered by them and GST involved thereon, with intent to evade the proper payment of IGST/CGST/SGST on its due date, but for the investigation proceedings conducted by DGGI Zonal Unit, Ahmedabad, these facts would have not come to light.

9.2 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.

9.3. It may be mentioned here that M/s SLMI had failed to declare actual service provision in the GST 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 GST Returns, or they have sought any specific clarification from the jurisdictional GST assessing authorities regarding the applicability of GST on the services of the same covering the period of this notice. In view of the specific omissions and commissions as elaborated earlier, it was apparent, that M/s SLMI had deliberately suppressed the facts of provision of the 'Taxable receipt/supply' from the GST department during the said period. Consequently, this amounts to mis-declaration and willful suppression of facts with the deliberate intent to evade payment of GST. The non-payment of GST on the amounts so paid for receiving Hiring of vessels services and providing coastal shipping services by M/s SLMI which appeared to be the 'taxable service' under supply of service/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 74 of the CGST Act, 2017 read with Section 74 of SGST Act, 2017 read with Section 20 of IGST Act, 2017 appeared to be rightly invocable to demand for the period discussed in foregoing paras.

10. Further, all above acts of contravention constitute an offence of the nature as described under the provision of Section 74 of the CGST Act, 2017 read with SGST Act, 2017, rendering themselves liable to penalty under Section 74 of the CGST Act, 2017 read with SGST Act, 2017, *ibid*, for failing to assess and pay proper tax within the prescribed time limit.

11. In light of the facts discussed hereinabove and the material evidences available on records, it was revealed that M/s SLMI have contravened the following provisions of the CGST Act, 2017:-

- (i) Section 9 of the CGST Act, 2017, in as much as they failed to levy and collect the appropriate GST on supply of taxable supply made by them to their customers/clients, with an intent to evade payment of Tax;
- (ii) Section 13 of the CGST Act, 2017, in as much as they failed to make payment of GST at the applicable rate at the stipulated time of supply of services;
- (iii) Section 37 and 39 of the CGST Act, 2017, in as much as they failed to furnish the proper statutory GST return;
- (iv) Section 49 of the CGST Act, 2017, in as much as they failed to discharge their tax liability, with an intend to evade payment of GST;
- (v) Section 59 of the CGST Act, 2017, in as much as they failed to self-assess their tax liability with an intend to evade payment of GST;
- (vi) Section 20 of IGST Act, 2017, in as much as they failed to pay the IGST on the Hiring of Vessels services availed from the overseas suppliers of service.

12. M/s SLMI, in spite of having knowledge of the various provisions of GST/IGST, had not paid the applicable GST/IGST amount to the government at appropriate time. They had never informed the GST department about the actual provision of supply/receipt of taxable services during the relevant time and they had also not filed showing the aforesaid actual provision of taxable service provided by them, by way of filling GST returns at the relevant time. M/s SLMI had, thus, willfully suppressed the actual provision of taxable service received by them with an intent to evade the GST. It, thus, appeared that M/s SLMI, as a supplier of service/ recipient of Service, appeared to have deliberately suppressed the actual provision of the taxable services supplied/received by them, from the Jurisdictional GST Authority and failed to determine and pay the due GST with an intention to evade payment of GST in contravention of the various provisions of the Finance Act, 1994 and Rules made there under, as discussed herein above in length. Hence, the extended period, as provided in proviso of sub-section (2) of Section 74 of CGST act, 2017 read with SGST Act, 2017 is invocable for demanding the GST in the subject matter. Accordingly, an amount of GST to the tune of Rs. 2,96,91,923/- leviable on supply/receipt of services by them during the period November, 2017 to March, 2020 which has already been paid is appropriated against the said GST liability, by invoking extended period, under proviso to sub-section (2) of Section 74 CGST Act, 2017, read with SGST Act, 2017 along with Interest at applicable rate provided under Section 50 of CGST Act, 2017 read with Section 50 of SGST Act, 2017 and Section 20 of IGST Act, 2017. The said act on the part of the assessee made them liable to penalty under Section 74, 76 and 122 (1) (xii) of CGST Act, 2017 read with SGST Act, 2017.

13. M/s Seacoast Logistics & Marine Infrastructure, were issued Show Cause Notice No. DGGI/AZU/Gr.D/36-181/2021-22 dated 31.03.2022 and having DIN 202203DWW30000623390, asking them to show cause as to why:-

- (i) The GST amount of **Rs. 2,36,67,033/- (Rupees Two Crores Thirty Six Lakhs Sixty Seven Thousand and Thirty Three only)**, evaded on providing such taxable supplies for period November-2017 to March-2020 should not be demanded and recovered from them under Section 74 of the CGST Act, 2017 read with Section 74 of Gujarat GST Act, 2017 and further read with Section 20 of IGST Act 2017 ;
- (ii) GST amounting to Rs. 16,78,261/- (CGST : Rs.6,70,923+ SGST Rs. 10,07,338/-) paid during the investigation should not be appropriated against the outstanding GST liability as detailed in (i) above.
- (iii) The IGST amount of **Rs. 60,24,890/- (Rupees Sixty Lakhs Twenty Four Thousand Eight Hundred and Ninety only)**, evaded on receiving such taxable supplies from overseas supplier for period July-2017 to April-2018 should not be demanded and recovered from them under Section 74 of the CGST Act, 2017 read with Section 74 of Gujarat GST Act, 2017 and further read with Section 20 of IGST Act 2017 ;
- (iv) Interest at applicable rates should not be demanded and recovered from them under Section 50 of the CGST Act, 2017 read with the Section 50 of

the Gujarat GST Act, 2017 and further read with Section 20 of IGST Act, 2017 on the GST liability mentioned at (i) and (iii) above;

- (v) Penalty should not be imposed upon them under Section 74 of CGST Act, 2017 read with Section 74 of SGST Act, 2017 and further read with Section 20 of IGST Act, 2017 for failing to assess and pay proper GST within the prescribed time limit, on the GST liability mentioned at (i) and (iii) above;
- (vi) Penalty should not be imposed upon them under Section 122(1)(iii)/(2)(b) of CGST Act, 2017 read with Section 122(1)(iii)/(2)(b) of SGST Act, 2017 and further read with Section 20 of IGST Act, 2017 for collecting tax and failing to pay the same to the Government beyond a period of three months.

DEFENCE REPLY

14. 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

15. Personal Hearing in this case has been granted to M/s. SLMI on 23.06.2023, 10.08.2023, 08.09.2023 and 11.10.2023. However, neither M/s. SLMI nor their authorised representative attended for P.H. Therefore, I proceed with the adjudication process on the basis of available records and on the merits of the case.

DISCUSSION AND FINDINGS

16. I have carefully gone through the records of the case and the facts available on record. It was noticed that four 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.

17. 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. COLLECTOR 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."

18. I find that in the present case two issues are involved as follows:-

- a) M/s SLMI had supplied taxable services viz. Handling Service, Road Transport Services, Ocean Freight Services etc. during the period November, 2017 to march, 2020 and collected GST as applicable but had failed to deposit the same to the Government.
- b) M/s. SLMI had hired vessels from overseas entities. However, they had not paid applicable GST under reverse charge mechanism.

19. 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.

19.1. Scope of supply as defined under Section 7 of the CGST Act; 2017:-

"7. (1) For the purposes of this Act, the expression "supply" includes—

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(b) Import of services for a consideration whether or not in the course or furtherance of business;

(c) The activities specified in Schedule I, made or agreed to be made without a consideration;

(d).....”

19.2. Section 20 of IGST Act 2017.

“Subject to the provisions of this Act and the rules made thereunder, the provisions of Central Goods and Services Tax Act, 2017 relating to –

- (i) scope of supply;*
 - (ii) composite supply and mixed supply*
 - (iii) time and value of supply;*
 - (iv) input tax credit;*
 - (v) registration;*
 - (vi) tax invoice, credit and debit notes;*
 - (vii) accounts and records;*
 - (viii) returns, other than late fee;*
 - (ix) payment of tax;*
 - (x) tax deduction at source;*
 - (xi) collection of tax at source;*
 - (xii) assessment;*
 - (xiii) refunds;*
 - (xiv) audit;*
 - (xv) inspection, search, seizure and arrest;*
 - (xvi) demands and recovery;*
 - (xvii) liability to pay in certain cases;*
 - (xviii) advance ruling;*
 - (xix) appeals and revision;*
 - (xx) presumption as to documents;*
 - (xxi) offences and penalties;*
 - (xxii) job work;*
 - (xxiii) electronic commerce;*
 - (xxiv) transitional provisions; and*
 - (xxv) miscellaneous provisions including the provisions relating to the imposition of interest and penalty,*
- shall, mutatis mutandis, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under this Act:*

Provided that

Provided further that

Provided also that for the purposes of this Act, the value of a supply shall include any taxes, duties, cess, fees and charges levied under any law for the time being in force other than this Act, and the Goods and Services Tax (Compensation to States) Act, if charged separately by the assessee:

Provided also that in cases where the penalty is leviable under the Central Goods and Services Tax Act and the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, the penalty leviable under this Act shall be the sum total of the said penalties.”

19.3.

Section 2(102) –*“Services” means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged; [Explanation.— For the removal of*

doubts, it is hereby clarified that the expression —services includes facilitating or arranging transactions in securities;]”

19.4. Section 2 (21) of IGST Act 2017 defines “Supply” which have the same meaning as assigned to it in Section 7 of the CGST Act 2017.

19.5. Levy and Collection of Tax as defined under Section 5 of the IGST Act, 2017:

“5. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:

Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.

5 (2).....

5 (3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.”

19.6. The government has issued Notification No.10/2017 –IT(Rate) dated 28.06.2017 has been issued under Section 5(3) of the IGST Act, 2017. Relevant portion of the same is reproduced below:-

“In exercise of the powers conferred by sub-section (3) of section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government on the recommendations of the Council hereby notifies that on categories of supply of services mentioned in column (2) of the Table below, supplied by a person as specified in column (3) of the said Table, the whole of integrated tax leviable under section 5 of the said Integrated Goods and Services Tax Act, shall be paid on reverse charge basis by the recipient of the such services as specified in column (4) of the said Table:-

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
1	Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient.	Any person located in a non-taxable territory	Any person located in the taxable territory other than non-taxable online recipient.

19.7. Further, the term "non-taxable online recipient" referred to in above notification, has been defined in clause (16) of Section 2 of the IGST Act, 2017. The same is reproduced below:-

"(16) "non-taxable online recipient" means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory"

19.8 Levy and Collection as defined under Section 9 (1) of the CGST Act, 2017, read with Section 9(1) GGST Act, 2017 & Section 20 of IGST Act, 2017 :-

"9. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person."

19.9. The time to pay the tax on supply of taxable services is stipulated in Section 13 of the CGST Act, 2017. The relevant portion of the same is reproduced below:-

"13. (1) The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.

(2) The time of supply of services shall be the earliest of the following dates, namely:—

(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or

(b) the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or

(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:

Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount."

19.10. Section 37 of the CGST Act, 2017 reads as:

"37. (1) Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed:

Provided that the registered person shall not be allowed to furnish the details of outward supplies during the period from the eleventh day to the fifteenth day of the month succeeding the tax period:

Provided further that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:

Provided also that any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner."

19.11. Rule 59 of the CGST Rules, 2017 regarding filing of GSTR-1 return is reproduced below:-

"59. Form and manner of furnishing details of outward supplies.-

(1) Every registered person, other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017, required to furnish the details of outward supplies of goods or services or both under section 37, shall furnish such details in FORM GSTR-1 electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner."

19.12. Section 39 of the CGST Act, 2017 lays down that every registered person should file a return giving details of the outward supply made by them, inward supply received by them including the ITC available with them. Section 39 of the CGST Act, 2017 reads as under:

"39. (1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed, on or before the twentieth day of the month succeeding such calendar month or part thereof.

(2) A registered person paying tax under the provisions of section 10 shall, for each quarter or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable and tax paid within eighteen days after the end of such quarter.

(3) Every registered person required to deduct tax at source under the provisions of section 51 shall furnish, in such form and manner as may be prescribed, a return, electronically, for the month in which such deductions have been made within ten days after the end of such month.

(4) Every taxable person registered as an Input Service Distributor shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within thirteen days after the end of such month.

(5) Every registered non-resident taxable person shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within twenty days after the end of a calendar month or within seven days after the last day of the period of

registration specified under sub-section (1) of section 27, whichever is earlier.

(6) The Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the returns under this section for such class of registered persons as may be specified therein:

Provided that any extension of time limit notified by the Commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner.

(7) Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return.

(8) Every registered person who is required to furnish a return under sub-section (1) or sub-section (2) shall furnish a return for every tax period whether or not any supplies of goods or services or both have been made during such tax period.

(9) Subject to the provisions of sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed, subject to payment of interest under this Act:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier.

(10) A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods has not been furnished by him."

19.13. Rule 61 of the CGST, Rules, 2017, as amended reads as:

"61. Form and manner of furnishing of return.-(1) Every registered person other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) or an Input Service Distributor or a non-resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under section 52 shall furnish a return in FORM GSTR-3B, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner....."

19.14. Payment of tax as detailed under Section 49 of the CGST Act, 2017:

"49. (1) Every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed.

(2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41, to be maintained in such manner as may be prescribed.

(3) The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.

(4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.”

19.15. Interest on delayed payment as detailed under Section 50 of the CGST Act, 2017:

“50. (1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.

(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.

(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.”

19.16. Self-Assessment as defined under Section 59 of the CGST Act, 2017:

“59. Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39.”

19.17. Suppression of facts or misstatement as defined under Section 74 of the CGST Act, 2017:-

“74. (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

(2) to (6).....

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five percent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty percent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.”

20. 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.

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

- M/s. SLMI hire vessels from various entities located in India and outside India;
- They had hired vessels from overseas entities (persons located in non-taxable territory) and had made payment to these entities;
- M/s. SLMI had made payment of Rs. 12,04,97,800/- to these entities during the period from July, 2017 to April, 2018;
- M/s. SLMI are engaged in providing "Transportation of Goods by Coastal Shipping" and "Transportation of Goods by Road" services;
- They had collected GST from the recipients of services for services provided by them;
- M/s SLMI had provided out ward supply of service amounting to Rs. 16,38,45,915/- during the period from November, 2017 to March, 2020.

21.2. On going through the material available on record and statement of Shri Sameer Amit Shah, Partner of M/s. SLMI, I find that M/s. SLMI had hired vessels from overseas entities and made payment to these entities. Hiring of vessels is covered in the definition of "services" defined in Section 2(102) of CGST Act, 2017. Further, as per provisions of Section 7, "import of services for a consideration whether or not in the course or furtherance of business" is included in scope of supply. Also, as per entry no. 1 of Notification No. 10/2017 -IT(Rate) dated.28.06.2017, in respect of any services supplied by any

person who is located in a non-taxable territory to person other than non-taxable online recipient, recipient of service located in taxable territory other than non-online recipient. Further, M/s. SLMI is not covered under the definition of "non-taxable online recipient". According to these provisions, M/s. SLMI were liable to discharge GST liability in respect of services supplied from person located in non-taxable territory, i.e. hiring of vessels from overseas entities. M/s. SLMI had availed services amounting to Rs. 12,04,97,800/- during the period July, 2017 to April, 2018 on which M/s. they had not paid GST of **Rs.60,24,890/-** (IGST) under reverse charge in accordance with the aforesaid provisions as detailed in Para 4.1 above.

21.3. I further find that M/s. SLMI had provided "services" to their clients and they were liable to discharge their GST liability thereon in accordance with provisions of Section 9(1) of the CGST Act, 2017. The services provided by M/s. SLMI are not exempted by virtue of exemption notification. Further, M/s. SLMI have also charged and collected GST from their clients. Accordingly, they are liable to discharge GST liability in respect of services provided by them in accordance with the legal provisions discussed in foregoing paras. M/s. SLMI had provided out ward supply of service amounting to Rs. 16,38,45,915/- during the period from November, 2017 to March, 2020 and GST of Rs. 2,36,67,033/- (CGST Rs.81,65,634/- SGST Rs.81,65,634 and IGST Rs. 73,35,765/-) is payable thereon as detailed in Para 3 above.

21.4. A taxpayer 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 GST under reverse charge being the service recipient and under forward charge being supplies of services. 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 GST or abatement of value for the purpose of calculating GST liability.

21.5. All the above acts of contravention of the various provisions of the CGST Act, 2017, Gujarat GST Act, 2017 and IGST Act, 2017, as amended from time to time, and Rules framed thereunder, on the part of M/s. SLMI have been committed by way of suppression of facts with an intent to evade payment of GST and, therefore, the GST not paid is required to be demanded and recovered from them under provisions of Section 74 CGST Act, 2017 read with Section 74 of the Gujarat GST Act, 2017, as amended from time to time. All these acts of contravention of the various provisions of GST law, as amended from time, on part M/s. SLMI have rendered themselves for penal action under the provisions of Section 74 of the CGST Act, 2017 read with Section 74 of the SGST Act, 2017.

22.1. Now, I proceed to decide the applicability of interest. I find that under Section 49 and Section 50 of the CGST Act, 2017 read with Rule 87 of the CGST Rules, 2017 and the corresponding entry of Gujarat State Goods and Services Tax Act, 2017 (hereinafter referred to as 'SGST Act, 2017' for sake of brevity), it has been clearly stipulated that the taxpayer is required to pay interest at notified rates for delay payment of GST, in Cash by debiting the same in their Electronic Cash Ledger. Further, as per sub-section (2) of Section 50, the interest under sub-section (1) is to be calculated in such manner as

may be prescribed. Manner of calculation of interest has been prescribed in Rule 88B of the CGST Rules, 2017. The said rule was inserted vide Notification No. 14/2022-CT dated. 05.07.2022 with effect from 01.07.2017. The said rule is reproduced below for ease of reference:-

"Rule 88B. Manner of calculating interest on delayed payment of tax.-

(1) In case, where the supplies made during a tax period are declared by the registered person in the return for the said period and the said return is furnished after the due date in accordance with provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, the interest on tax payable in respect of such supplies shall be calculated on the portion of tax which is paid by debiting the electronic cash ledger, for the period of delay in filing the said return beyond the due date, at such rate as may be notified under sub-section (1) of section 50.

(2) In all other cases, where interest is payable in accordance with sub-section (1) of section 50, the interest shall be calculated on the amount of tax which remains unpaid, for the period starting from the date on which such tax was due to be paid till the date such tax is paid, at such rate as may be notified under sub-section (1) of section 50.

(3) In case, where interest is payable on the amount of input tax credit wrongly availed and utilised in accordance with sub-section (3) of section 50, the interest shall be calculated on the amount of input tax credit wrongly availed and utilised, for the period starting from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount, at such rate as may be notified under said sub-section (3) of section 50.

Explanation.-For the purposes of this sub-rule, -

(1) input tax credit wrongly availed shall be construed to have been utilised, when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, and the extent of such utilisation of input tax credit shall be the amount by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed.

(2) the date of utilisation of such input tax credit shall be taken to be, -

(a) the date, on which the return is due to be furnished under section 39 or the actual date of filing of the said return, whichever is earlier, if the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, on account of payment of tax through the said return; or

(b) the date of debit in the electronic credit ledger when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, in all other cases."

22.2. In view of the above specific provisions regarding payment of interest, I find that M/s. SLMI are liable to pay interest on the GST payable by them.

23.1. Now, coming to next limb regarding imposition of penalty under the provisions of Section 74(1). I find that in the SCN, it has been alleged that M/s. there was willful suppression on the part of M/s. SLMI and penalty under Section 74 of the CGST Act, 2017 read with Section 74 of Gujarat GST Act, 2017 read with Section 20 of the IGST Act, 2017. I find that it is pertinent to discuss the definition of "suppression" before going further on the

issue of imposition of penalty. The term "suppression" has been defined in Explanation 2 to the Section 74 of the CGST Act, 2017, which is reproduced below:-

"Explanation 2.—For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer."

23.2. As per the above definition, suppression means non-declaration of facts or information which a taxable person is required to declare in the return, statement or any other document. As per provisions of Section 39 of the CGST Act, 2017 read with Rule 61 of the CGST Rules, 2017, registered person is required to furnish, a return, electronically, of **inward and outward supplies of goods or services or both**, input tax credit availed, **tax payable**, tax paid and such other particulars, in form GSTR-3B. In the present case, I find that M/s. SLMI had not declared correct value of inward and outward supplies and tax payable thereon. Accordingly, I find that this is squarely covered in the definition of "suppression" given in Explanation 2 to the Section 74 of the CGST Act, 2017.

23.3. I also find that M/s. SLMI had not claimed any exemption nor did they seek any clarification from the jurisdictional GST authorities regarding the applicability of GST on the services received by them and provided 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 and providing services liable to GST. 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 GST. Had there been no investigation against M/s. SLMI by DGGI, GST evasion on the part of M/s. SLMI would not have come to the knowledge of the department.

23.4. The government has from the very beginning placed full trust on the taxpayer so far as GST 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 taxpayer; 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 the taxpayer, no matter how innocently. Non-payment of GST 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, concealment and non-furnishing value of services received from person located in non-taxable territory and value of services supplied with intent to evade payment of GST. All the above facts of contravention on the part of the service provider have been committed with an intention to evade the payment of GST by suppressing the facts.

23.5. 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 priori 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.

23.6. Accordingly, I find that they are liable to penalty equivalent to the tax in accordance with the provisions of Section 74 of CGST Act, 2017 read with Section 74 of Gujarat GST Act, 2017 read with Section 20 of the IGST Act, 2017.

24. In the Show Cause Notice, it has also been proposed to impose penalty under Section 122(1)(iii)/122(2)(b) of the CGST Act 2017. However, as per provisions of subsection 13 of Section 75 of CGST Act 2017, where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act. Accordingly, I refrain from imposing penalty under 122(1)(iii)/122(2)(b) and Section of the CGST Act 2017.

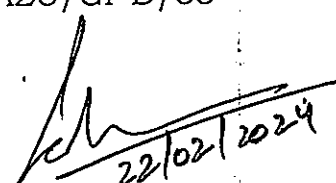
24. In view of the above discussions and findings, I pass the following order.

ORDER

- (i) I confirm the demand of GST amounting of **Rs. 2,36,67,033/- (Rupees Two Crore Thirty Six Lakh Sixty Seven Thousand and Thirty Three only)** (CGST Rs.81,65,634/- SGST Rs.81,65,634 and IGST Rs. 73,35,765/-) evaded on providing such taxable supplies for period November-2017 to March-2020 and order to recover the same from M/s. SLMI under Section 74(9) of the CGST Act, 2017 read with Section 74 (9) of the Gujarat GST Act, 2017 and further read with Section 20 of the IGST Act;
- (ii) I order to appropriate GST amounting to Rs. 16,78,261/- (CGST Rs.6,70,923 + SGST Rs. 10,07,338/-) paid by M/s. SLMI during the investigation against the confirmed demand at 24(i) above;
- (iii) I confirm the demand of GST amounting of **Rs. 60,24,890/- (Rupees Sixty Lakh Twenty Four Thousand Eight Hundred and Ninety only)** (IGST Rs. 60,24,890/-) evaded on receiving such taxable supplies from overseas supplier for period July-2017 to April-2018 and order to recover the same from M/s. SLMI under Section 74(9) of the CGST Act,

- 2017 read with Section 74 (9) of the Gujarat GST Act, 2017 and further read with Section 20 of the IGST Act;
- (iv) I order to recover interest at applicable rates on GST demand confirmed at 24(i) and 24(iii) above by holding the liability of interest on confirmed demand under Section 50(1) of the Central Goods and Services Tax Act, 2017 read with Rule 88B of the CGST Rules, 2017, Section 50(1) of the Gujarat GST Act, 2017 and Section 20 of the IGST Act, 2017;
- (v) I impose penalty of **Rs. 2,96,91,923/- Rupees Two Crore Ninety Six Lakh Ninety One Thousand Nine Hundred Twenty Three only) (CGST Rs. 81,65,634/- + SGST Rs. 81,65,634/- + IGST Rs. 1,33,60,655/-)** on M/s. SLMI under Section 74 of the CGST Act, 2017 read with Section 74 of the Gujarat GST Act, 2017 and further read with Section 20 of the IGST Act, 2017, however, if M/s. SLMI pay the tax amount and interest thereon under section 50 (as determined at S.N. 24(i) to 24(vi) above) and a penalty equivalent to fifty per cent of such tax within thirty days of communication of this order, all proceedings in respect of the notice shall be deemed to be concluded in accordance with the provisions of Section 74(11) of the CGST Act, 2017 read with Section 74(11) of the Gujarat GST Act, 2017 and further read with Section 20 of the IGST Act, 2017;
- (vi) I do not impose penalty under Section 122(1)(iii)/122(2)(b) of the CGST Act, 2017 read with Section 122(2)(b) of the Gujarat GST Act, 2017 and further read with Section 20 of the IGST Act, 2017.

25. Accordingly, the Show Cause Notice bearing F.No. DGGI/AZU/Gr-D/36-181/2021-22 dated 31.03.2022 is disposed of.


22/02/2024
(LOKESH DAMOR)

Additional Commissioner
Central GST & Central Excise
Ahmedabad North

Dt.: 22.02.2024

F.No. GST/15-20/OA/2022

To,
M/s Seacoast Logistics & Marine Infrastructure
13, Chandroday Co Op Housing Society Ltd,
Near Sardar Patel Stadium, Navrangpura,
Ahmedabad, Gujarat, 380014.

Copy to:-

1. The Commissioner of CGST & C.Ex., Ahmedabad North.
2. The Joint Commissioner, Division -I, Ghatak-1, Rajya Kar Bhavan, Ashram Road, Vishalpur, Muslim Society, Navrangpura, Ahmedabad-380009 for information please.
3. The Deputy/Assistant Commissioner, Central Excise & CGST, Division-VII, Ahmedabad North.
4. The Superintendent, , C. Ex. & CGST, Range-I, Division-VII, Ahmedabad North, with a request to create Form GST DRC-07 electronically in terms of DSR Advisory no.01/2018 dated 26.10.2018 of the ADG, Systems & Data Management, Bengaluru.
5. The Superintendent (Systems) CGST, Ahmedabad North, for uploading on website.
6. Guard File

