आयुक्त (अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

सत्यमेव जयते

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DIN: 20221264SW00000024E1

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/391/2022-APPEAL / SH98 ~ 5503

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-70/2022-23**
दिनाँक Date : **25-11-2022** जारी करने की तारीख Date of Issue 02.12.2022

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

ग Arising out of Order-in-Original No. **30/JC/MR/2021-22** दिनाँक: **14.12.2021**, issued by Joint Commissioner, CGST, Ahmedabad-North

घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant
M/s. Samrat Logistics,
B-502, Sukhshanti Apartment,
Changodar, Ahmedabad-382213

2. Respondent
The Joint Commissioner,CGST, Ahmedabad North , Custom House, 1st Floor, Navrangpura, Ahmedabad - 380009

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

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

भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

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

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

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

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

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

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

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

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

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

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

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

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

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

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

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

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

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

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

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

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

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

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

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

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

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

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

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

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

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

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

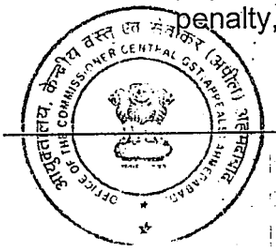
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

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

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

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

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER – IN – APPEAL

The present appeal has been filed by M/s. Samrat Logistics, B-502, Sukhshanti Apartment, Changodar, Ahmedabad-382213 (hereinafter referred to as '*the appellant*') against Order–in–Original No. 30/JC/MR/2021-22 dated 14.12.2021 (for brevity referred to as "*the impugned order*") passed by the Joint Commissioner, Central Tax, CGST & Central Excise, Ahmedabad North (for short referred to as the "*adjudicating authority*").

2. On the basis of the data received from the CBDT for the period F.Y. 2015-16 and F.Y. 2016-17, it was noticed that the gross value of taxable services shown in the ST-3 Returns by the appellant was less vis a vis the amount shown as 'Total Amount paid/Credited under Section 194 (C), 194(H), 194(I) and 194(J) of the Income Tax Act and 'Sales of Services' in their ITR filed with the Income Tax department. Letters were issued to the appellant to explain the reasons for non-payment of tax and to provide documents like ITR, Form 26AS, VAT/Sales Tax returns, Annual Bank Account, Contracts /Agreement entered for provision of service, Balance Sheet, P&L A/c, ST-3 returns, etc. However, they did not submit any documents therefore they were summoned vide letter dated 03.09.2020 and 17.09.2020, to produce the documents. However, the appellant neither produced any documents nor submitted any reply clarifying the above difference.

2.1 The value of services declared in ITR filed for the F.Y. 2015-16 and F.Y. 2016-17 was shown as Rs.1,60,57,139/- and Rs.2,18,79,542/- respectively and the amount credited under 194 (C), 194(H), 194(I) and 194(J) for F.Y.2015-16 and 2016-17 was shown as Rs.22,27014/- and Rs.52,81,962/-, respectively. Accordingly, the service tax demand of Rs.23,28,285/- and Rs.32,81,931/- (Total of Rs.56,10,216/-) for the F.Y.2015-16 and 2016-17 was worked out on the basis of the higher value shown in the ITR for the respective period.

2.2 A Show Cause Notice (SCN) dated 14.10.2021 was issued to the appellant proposing the recovery of service tax amount of Rs.56,10,216/- for the period F.Y. 2015-16 and F.Y. 2016-17 alongwith interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalty under Section 77 & 78 of the Finance Act, 1994 was also proposed. The SCN also proposed demand for the F.Y. 2017-18 (upto June 2017), which was to be ascertained in future (as the same was not disclosed to the CBDT or department), under Section 73(1) of the Finance Act, 1994 alongwith interest under Section 75 and penalty under Section 78 of the Act ibid.

2.3 The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs.56,10,216/-was confirmed alongwith interest. Penalty of Rs.56,10,216/- under Section 78 was imposed. Penalties of Rs.10,000/- each was also imposed u/s 77 (1) & 77(2) of the Finance Act 1994.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant has preferred the present appeal on the grounds elaborated below:-

The SCN was issued based on the difference in ITR –TDS data vis-a-vis ST-3 Returns and without carrying out proper verification of facts. Hence, the demand

is vague in terms of CBIC Instruction dated 26.10.2021. They placed reliance on the decision passed in the case of Faquir Chand Gulati-2008 (12) STR 401 (SC); Kush Constructions- 2019(24) GSTL 606 (Tri-All).

- Every income reported in ITR cannot be considered taxable for the levy of service tax. The service tax liability is demanded under Forward Charge mechanism whereas the fact is that the appellant is providing services of Transport of Goods. In terms of Notif.No.30/2012-ST dated 20.06.2012, for GTA services, the liability to pay tax is on service recipient. Self certified copy of invoices of business entities to whom the services have been rendered is submitted as proof.
- As per the exemption on threshold limit available in terms of Notif.No.33/2012-ST dated 20.06.2012, they are not required to pay taxes. Also the demand was raised without considering the benefit of abatement available, vide Entry No. 7 of Notif.No.26/2012-S.T dated 20.06.2012.
- Demand is time barred as no suppression of facts has been brought out nor any mis-representation of facts alleged.
- Penalty u/s 77 is not imposable as there was no contravention of any provision of the act. Also, penalty u/s 78 is not imposable as the demand is beyond the normal period of limitation and therefore not maintainable. Reliance has been placed on the decision passed in the case of Pahwa Chemicals-2005 (189) ELT 257(SC); Ispat Industries-2006(199) ELT 509 (T)

3.1 The appellant also made additional submissions on 16.11.2022, wherein they stated that the GTA services provided by them was to business entities such as Body Corporates, Partnership firms and Proprietary firm for which they have issued consignment notes or lorry receipts. Therefore, the liability to pay tax in terms of Notification No. 30/2012-ST shall be on the recipient of service. They claim that some services were also provided to other GTA Agencies and in such cases the service is exempted as covered under Entry No.22 of Mega Notification No.25/2012-ST dated 20.06.2012. They also submitted copy of Sales Register for the F.Y. 2015-16 & F.Y. 2016-17, as a proof.

4. Personal hearing in the matter was held on 18.11.2022. Mr. Sourabh Singhal, Chartered Accountant, appeared on behalf of the appellant. He re-reiterated the submissions made in the appeal memorandum as well as in the additional written submission made on 16.11.2022.

5. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made by the appellant in the appeal memorandum, addition written submissions as well as those made during personal hearing. The issue to be decided in the present case is as to whether the demand of Rs.56,10,216/- alongwith interest and penalties, confirmed in the impugned order passed by the adjudicating authority, in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to the period F.Y. 2015-2016 to F.Y. 2016-17.

6 On examining the SCN, it is observed that the service tax liability of Rs.23,28,285/- for the F.Y. 2015-16, and service tax liability of Rs.32,81,931/- for the F.Y. 2016-17, was ascertained on reconciliation of the income shown in the ST-3 Returns

filed by the appellant vis a vis the amount shown as 'Total Amount paid/Credited under 194 (C), 194(H), 194(I) and 194(J) and 'Sales of Services' in their ITR filed with the Income Tax department. The service tax liability for the F.Y. 2017-18 (upto June 2017) was also proposed to be recovered, which was to be ascertained in future as the data was not disclosed with the Income Tax Department or any other agencies.

6.1 It is observed that the appellant before the adjudicating authority had raised the issue of exemption under Notification No.30/2012-ST. However the benefit of exemption was not granted by the adjudicating authority as the appellant failed to produce documents like ledger account, list of service receivers and the corresponding consignment notes/Lorry Receipts issued to them, in order to prove that the service provided to the service recipients were covered under category (a) to (f) of clause A(ii) of the said notification. I find that for availing the exemption notification, all the conditions prescribed in the notification shall be satisfied and failure to do so would disentitle the claimant from the exemption in the case. The onus to prove the entitlement of exemption is on the appellant and not vice-versa.

6.2 Similarly, the appellant also claimed that they are covered under Mega Notification No.25/2012-ST dated 20.06.2012, hence eligible for exemption. Relevant entries of the said notification is reproduced below;-

21. ***Services provided by a goods transport agency by way of transportation of –***

(a) fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage;

(b) goods where gross amount charged for the transportation of goods on a consignment transported in a single goods carriage does not exceed one thousand five hundred rupees; or

(c) goods, where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed rupees seven hundred fifty;

22. ***Services by way of giving on hire –***

(a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or

(b) to a goods transport agency, a means of transportation of goods;

As per above notification, exemption is available to GTA service provider, if the transportation of goods is covered under clause (a) to (c) of Entry no. 21 and clause (a) to (b) of Entry no. 22. In the present appeal, the appellant have submitted the Ledger Account showing freight income received during the disputed period and copy of few Lorry Receipts issued by them, as sample. On going through these consignment notes /Lorry receipts, I find that some of the consignment notes submitted before me do not declare the freight charges. Thus, in the absence of proper documentary evidence, the benefit of exemption claimed cannot be extended them at this stage. Moreover, to examine the eligibility of the above notification, few sample consignment notes are not enough. In fact, they will have to produce all

the documentary evidences co-relating their claim of exemption from tax liability. Similarly, for claiming abatement under Notification No.26/2012-ST, the CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, should not be taken under the provisions of the CENVAT Credit Rules, 2004. However, no such evidence was produced either before me or before the adjudicating authority.

6.3 The next contention of the appellant is that they are eligible for the threshold exemption available in terms of Notification No.33/2012-ST dated 20.06.2012, which has not been allowed to the appellant. It is observed that the exemption of ten lakh rupees from the whole of the service tax leviable in any financial year is available to the service provider, on the basis of the aggregate value of the taxable services rendered in the previous financial year, if that does not exceeds ten lakh rupees. This exemption is available only to service provider and not to the person who is paying tax under Reverse Charge Mechanism (RCM). However, the appellant failed to produce any records to establish that the aggregate value of their taxable services rendered in the previous financial year, does not exceeds ten lakh rupees.

6.4 It is a well settled position of the law that a person who claims the exemption has to prove that he satisfies all the conditions of the Notification so as to be eligible to the benefit of the same. The Constitutional Bench decision of Hon'ble Supreme Court in the case of *CCE* v. *Harichand Shri Gopal* 2010 (260) E.L.T. 3 (S.C.); *Mysore Metal Industries* v. *CC*, Bombay 1988 (36) E.L.T. 369 (S.C.); *Moti Ram Tolaram* v. *Union of India* - [1999 (112) E.L.T. 749 S.C.]; *Collector* v. *Presto Industries* - 2001 (128) E.L.T. 321 and *Hotel Leela Ventures* v. *Commissioner* - 2009 (234) E.L.T. 389 (S.C.) has constantly emphasized upon this legal principle. It stands settled in all the above decisions that onus to prove and show the satisfaction of the conditions of the Notification is on the person who claims the benefit of the same and every exemption Notification has to be read in strict sense. Further, Hon'ble Supreme Court in the case of *Commissioner of Customs (Import), Mumbai* v. *Dilip Kumar & Company*— 2018 (361) E.L.T. 577 (S.C.) has held that burden to prove entitlement of tax exemption in terms of the Notification is on the person claiming such exemption. I also refer to another decision of the Hon'ble Supreme Court in the case of *Larsen & Toubro Ltd.* v. *Commissioner of Central Excise, Hyderabad* - 2015 (324) E.L.T. 646 (S.C.).

6.5 In view of the aforesaid law, I find that the onus of proving entitlement of tax exemption in terms of the above mentioned notifications is on the appellant, who is claiming such exemption. Without discharging such onus, no exemption can be extended at this stage. The appellant has produced some documents at the appellate stage which are not sufficient for establishing their claim for exemption. Hence, in the interest of justice, I find that the impugned order passed by the adjudicating authority needs to be remanded back to him for examining the issues of exemptions as claimed by the appellant under, Notification No. 25/2012-ST, Notification No. 26/2012, Notification No. 30/2012-ST and Notification No.33/2012-ST.

6.6 Further, the appellant has also contended that extended period cannot be invoked as the income earned against the services was reflected in the ITR and ST-3 Returns of the respective period, based on which the demand has been raised. As the

Income Tax Returns is a public document, suppression cannot be alleged. I do not find any merit in such argument. It is observed that in the case of *Maruti Udyog Ltd.* v. *CCE, New Delhi,* 2001 (134) E.L.T. 269, Hon'ble Tribunal has upheld the invocation of the extended period of limitation and held that the theory of universal knowledge cannot be attributed to the department in the absence of any declaration. The onus to disclose full and correct information about the value of taxable services lies with the service provider as the tax is paid based on self assessment and transactions reported in the ST-3 returns, which is a basic document. It is the bounden duty of the assessee to disclose all and correct information in the ST-3 returns. Non disclosure of full and correct information in returns would amount to suppression of facts. Non-payment of tax and non-submission of any clarification justifying the difference in income reflected in ITR vis-à-vis ST-3 Returns clearly establishes the conscious and deliberate intention to evade the payment of service tax. In the instant case, the appellant not only mis-declared the taxable income in the ST-3 returns but when they were summoned and asked to produce the documents and records before issuance of SCN, they neither appeared nor did they co-operate by producing any documents. I, therefore, find that all these ingredients are sufficient to invoke the provisions of extended period under proviso of Section 73(1) of the F.A, 1994. In these circumstances, the Tribunal held that the department had no occasion to know the activity of the appellant and there is suppression of fact on the part of the appellant.

6.7 It is observed that Hon'ble Tribunal in the case of ICICI Econet Internet & Technology Fund-2021 (51) G.S.T.L. 36 (Tri. - Bang.) at para 46, held that;

> *"It cannot be argued that suppression cannot be alleged as the information is in the public domain. Information being in the public domain is not of any consequence. The information should be in the knowledge or made available to the authorities concerned who need to take a certain decision depending on such information. It is not the case of the appellants that they have been paying applicable service tax on getting registered and have been submitting regular returns to service tax authorities. It is not the case of the appellants that the material information available in the form of various contracts/agreements and balance sheets/ledgers have been submitted to the Department suo motu by the appellants. It is only after investigation has been initiated, the necessary documents were submitted. Thus, the information available in the public domain is of no avail."*

7. The appellant is, therefore, directed to submit all the relevant documents and details to the adjudicating authority, including those submitted in the appeal proceedings, in support of their contentions. The adjudicating authority shall decide the case afresh on merits and accordingly pass a reasoned order, following the principles of natural justice.

8. In view of above discussion, I remand back the impugned order passed by the adjudicating authority for examination of the documents and verify the claim of the appellant and subsequently determine the tax liability.

9. Accordingly, the impugned order is set-aside and appeal filed by the appellant is allowed by way of remand to the adjudicating authority for decision of the case afresh.

10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed off in above terms.

25 NOVEMBER, 2022.

(अखिलेश कुमार)
आयुक्त (अपील्स)

Date: 25.11.2022

Attested
Rekha Nair
(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad

By RPAD/SPEED POST

To,

M/s. Samrat Logistics, - **Appellant**
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Changodar,
Ahmedabad-382213

Joint Commissioner,
Central Tax, CGST & Central Excise, - **Respondent**
Ahmedabad North
Ahmedabad

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North. (For uploading the OIA)
4. The Superintendent (System), CGST, Appeals, Ahmedabad, for uploading the OIA on the website.
5. ~~Guard File.~~