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

07926305065- टेलेफैक्स07926305136

रजिस्टर्ड डाक ए.डी. द्वारा DIN- 20210164SW000000D959

क फाइल संख्या : File No : V2(ST)20/Ahd-South/20-21

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP- 64/2020-21**

दिनाँक Date : **29-12-2020** जारी करने की तारीख Date of Issue

श्री अखिलेश कुमार आयुक्त (अपील) द्वारा पारित

Passed by Shri. Akhilesh Kumar, Commissioner (Appeals)

ग Arising out of Order-in-Original No **21/CX-I/Ahmd/ADC/MA/2019 dated 14.02.2020** issued by Additional Commissioner, Central GST, Ahmedabad-South.

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

M/s Toll Global Forwarding (India) Private Limited, B-1008, Infinity Tower, Corporate Road, Near Prahaladnagar, Ahmedabad-380015.

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 issued under the Central Excise Act 1944,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 पूर्वोक्त 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.

(b) 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.

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

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

(b) 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.

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

(c) 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।

(d) 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 अपील:–

Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) **केंद्रीय जीएसटी** अधिनियम, 2017 की धारा 112 के अंतर्गत:–

Under Section 112 of CGST act 2017 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 place where the bench of the Tribunal is situated.

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

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

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

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

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

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

(22) 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)

(23)

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:

(xxviii) amount determined under Section 11 D;
(xxix) amount of erroneous Cenvat Credit taken;
(xxx) amount payable under Rule 6 of the Cenvat Credit Rules.

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

6(i) 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."

II. **Any person aggrieved by an Order-In-Appeal issued under** the Central Goods and Services Tax Act,2017/Integrated Goods and Services Tax Act,2017/ Goods and Services Tax(Compensation to states) Act,2017,may file an appeal before the appellate tribunal whenever it is constituted within three months from the president or the state president enter office.

ORDER-IN-APPEAL

1. This order arises out of an appeal filed by M/s. Toll Global Forwarding (India) Private Limited, B-1008, Infinity Tower, Corporate Road, Near Prahladnagar, Ahmedabad-380015 (hereinafter referred to as '*appellant*') against Order in Original No. 21/CX-I/Ahmd/ADC/MA/2019 dated 14.02.2020 [hereinafter referred to as '*the impugned order*'] passed by the Additional Commissioner, Central GST, Ahmedabad-South (hereinafter referred to as '*the adjudicating authority*').

2. Facts of the case, in brief, are that the appellant is engaged in providing services under the category of "Clearing and Forwarding Agent services, Steamer Agent Service and Goods Transport Agency" and holding Service Tax Registration Number AACCD1028QSD006.

2.1 Audit of the records of the appellant was carried out by the departmental audit officers for the period from 2014-15 to 2016-17 and a Final Audit Report No. 1567/2018-19-Service Tax was issued on 04.04.2019 by the Assistant Commissioner, Circle-IV, Central Tax, Ahmedabad. Subsequently, a show cause notice has been issued to the said appellant by the Additional Commissioner, CGST, Audit, Ahmedabad vide F.No. VI/1(b)/Tech-11/SCN/Toll Global/2019-20 dated 20.06.2019 for demand and recovery of the amounts as reproduced below:

(i) Service tax amounting to Rs. 1,26,81,462/- on account of short payment of service tax noticed on reconciliation of income, as declared in ST-3 Returns for the period vis-à-vis their financial records.

(ii) Service tax amounting to Rs. 3,107/- on account of non paymentof service tax on legal service under reverse charge mechanism.

(iii) Interest at the appropriate rate on the demands proposed at (i) and (ii) above under Section 75 of the FinanceAct, 1994.

(iv) Penalty proposed on account of the demands proposed at (i) and (ii) above under Section 78 (1) of the Finance Act, 1994.

(v) Cenvat Credit of Rs. 1,07,413/- on account of wrong availment of cenvat credit on invoices issued to other unit.

(vi) Cenvat Credit of Rs. 39,13,604/- on account of wrong availment of cenvat credit without the cover of proper documents.

(vii) Penalty proposed on account of the demands proposed at (v) and (vi) above under Section 78 of the Finance Act, 1994 readwith Rule 15 (3) of the Cenvat Credit Rules.

(viii) Interest at the appropriate rate on the demands proposed at (v) and (vi) above under Section 75 of the Finance Act, 1994 readwith Rule 14 (1) (ii) of the Cenvat Credit Rules.

(ix) *Amount of Rs. 1,21,600/- towards penalty under Section 77 (1) (c) of the Finance Act, 1994.*

CGST, Thane Rural [MANU/CM/0131/2019] (CESTAT-Mumbai) (iii) Commissioner of Central Excise & Service Tax, Nagpur Vs. Spacewood office solution private limited [2018-TIOL-2461-CESTAT-MUM]

3.4 As regard the denial of Cenvat Credit of Rs. 39,13,604/- on account of availment without proper documents, it has been submitted that they have procured input services and utilized for providing output services and cenvat credit was availed by the company on the basis of valid documents i.e. Invoices. The appellant has produced cenvat credit register alongwith sample invoices in support of their contention which has not been taken into consideration by the adjudicating authority.

3.5 There was no suppression of facts and hence the extended period of limitation is unwarranted. The reconciling transactions were not taxable under the Finance Act and thus, it can be said that there is no such suppression of facts/evasion of tax. Such Income inadvertently not disclosed in the service tax return is not taxable. Accordingly, it is evident that there is no intention on part of the Appellant to evade service tax payment. In respect of the input invoices, they have submitted sample invoices and mentioned all the facts in their submissions made before the department. Invoking the extended period of time limitation on account of merely alleging the input tax credit to be ineligible cannot be said to be suppression of fact. They have relied upon the following judgements in support of their contention:

- *Padmini Products Vs. Commissioner of Central Excise [1989 (43) ELT 195 (SC)]*
- *Commissioner of Central Excise Vs. Chemphar Drugs & Liniments [1989 (40) ELT 276 (SC)]*
- *Godrej Foods Ltd. Vs. Union of India [1993 (68) ELT 28 (HC-MP)]*

3.6 In respect of short payment of service tax of Rs. 2,18,469/-, it is submitted that they were under bonafide belief that service tax was not payable and they became aware of the said instances at the time of audit and therefore, accepts its liability of said amount. However, extended period is not invokable in a case where the assessee was under the bonafide belief that tax was not payable in view of the following judicial pronouncements:

- *CCE Vs. Raptakos Brett & Co. [2006 (194) ELT 101 (Tri.-Mum.)]*
- *CCE Vs. Rishabh Velveleen (P) Ltd. [1999 (114) ELT 839 (Tri.)]*
- *Pee Jay Apparels (P) Ltd. Vs. CCE [2001 (135) ELT 842 (Tri.-Del)]*
- *Cosmic Dye Chemical Vs. CCE [1995 (75) ELT 721 (SC)]*

3.7 As regards the penalty imposed under Section 78 of the Act, it is submitted that there was no intention of any fraud or suppression of facts in the instant case and hence, the penalty imposed under Section 78 of the Act is not unsustainable. They have relied upon the following judicial pronouncements:

- *Anand Nishikawa Co. Ltd. Vs. Commissioner of Central Excise, Meerut [(2005) 7 SCC 749=2005 (188) ELT 149 (SC)]*
- *Infinity Infotech Parks Ltd. Vs. Union of India [2014 (36) STR 37]*
- *Pushpam Pharmaceuticals Co. Vs. CCE [78 ELT 401 1995]*

As per the settled legal principles, the onus is on the department to produce evidences to prove that the assessee had committed deliberate acts of suppression to evade the payment of tax. There is no deliberate contravention of the provisions of the Act and there is no allegation of any conscious act on the part of them that constitutes suppression of facts or contravention of any of the provisions of the act with intent to evade service tax. Accordingly, penalty imposed is legally not sustainable. They have relied upon the judgement of Hon'ble Supreme Court in case of Hindustan Steel Ltd. Vs. State of Orissa [1978 (2) ELT J 159].

3.8 As regards the penalty imposed under Section 77 of the Act, it is submitted that the authorities has asked the company vide the notice dated 13.07.2017 which have been submitted by the company vide letter and mail dated 10.01.2018, 15.02.2018, 24.05.2018 and 27.06.2018. Further as regards the contention of the adjudicating authority that the company has not reverted to the objections which were communicated on 16.11.2018, 23.01.2019 and 25.02.2019 & 01.03.2019, it is submitted that they had always been in touch with the departmental authorities and mentioned their incapability to provide the documents and the time extension letters were filed intimating them about such delays and reasons for the same. Accordingly, it is submitted that the documents/information required for the purpose of audit were submitted on timely basis and therefore, the imposition of penalty under Section 77 (1) (c) of the act is bad in law.

4. The appellant was granted opportunity for personal hearing on 29.10.2020 through video conferencing platform. Ms.Manpreet Kaur and Mr.Punit Jain appeared for personal hearing as authorised representative of the appellant. They re-iterated the submissions made in Appeal Memorandum.

2.2 The show cause notice dated 20.06.2019 has been adjudicated by the adjudicating authority vide the impugned order wherein all the demands except one, proposed vide the show cause notice [as reproduced in above para-2.1] have been confirmed and ordered to be recovered alongwith penalty & interest leviable thereon. Further, the adjudicating authority has dropped the demand of Rs.3,107/- towards service tax demand on legal service under reverse charge basis.

3. Being aggrieved with the impugned order, the appellant preferred this appeal on the grounds reproduced in following paragraphs.

3.1 The adjudicating authority has not considered the documents submitted by the appellant in reply to SCN as well as the additional documents submitted pursuant to the personal hearing. The summary of the issue wise documents submitted by the appellant is reproduced below:

1. Reconciliation between financial statements and ST-3 return for the relevant period:
   - Detailed reconciliation providing reasoning for each item of reconciliation.
   - Documents such as invoices, Form ST-2 FIRCs etc. in support thereof.
   - CA Certificate certifying the said reconciliation.
2. Availment of credit pertaining to other locations:
   - Legal submission with respect to the eligibility of Cenvat Credit.
   - Confirmation with respect to non-availment of credit in any other registration.
   - Copies of sample invoices.
   - CA certificate certifying the said input credit.
3. Wrong availment of cenvat credit without proper documents:
   - Copies of sample invoices.

They have also submitted the ledger dump of the turnover through mail pursuant to the personal hearing which has also not been considered by the adjudicating authority. Accordingly, the order issued without considering all the facts of the case is not sustainable in law as per various judicial pronouncements.

3.2 As regards the liability of service tax confirmed on differential income noticed on reconciliation of income as per books of accounts, it is submitted that the variance in revenue reported in service tax return and trial balance sheet is due to the fact that the they had inadvertently not reported non-

taxable turnovers in the service tax returns as they were under mistaken belief that only taxable turnover was required to be reported and accordingly they had inadvertently not reported the following key turnovers in service tax return filed during the relevant year.

(i) Exempt services covered under the negative list i.e. Section 66D of the Act-Sample invoices are submitted in reply to SCN.

(ii) Export of services- Sample invoices are submitted in reply to SCN alongwith foreign inward remittance certificate.

(iii) Reimbursement of statutory fees- The Sample invoices are submitted in reply to SCN. They were incurred as pure agent and reimbursement will not be liable to service tax.

(iv) Services to SEZ Unit- Sample invoices are submitted in reply to SCN.

(v) Income reported in service tax return of Maharashtra state but appearing in trial balance sheet of state of Gujarat- Sample invoices raised from Gujarat alongwith Form ST-1 and ST-2 were submitted.(tax was inadvertently discharged from Maharashtra)

(vi) Accrued Income

(vii) Turnover appearing in trial balance in FY 2015-16, but invoice raised in FY 2016-17-: Service tax was paid in year in which invoice was raised.

(viii) Turnover appearing in trial balance in FY 2016-17, but invoice raised in FY 2015-16-: sample invoice were enclosed in reply to SCN.

(ix) Sea imports turnover reported in return at abated value instead of gross value

(x) Other Miscellaneous adjustments

In addition, the appellant vide letter dated 04.02.2020 submitted CA Certificate certifying reasons of reconciliation of income as per trial balance vis-à-vis service tax return.

3.3 As regard the denial of Cenvat Credit of Rs. 1,07,413/- on invoices issued to other states, it is submitted that the aforesaid credit has been claimed only at Ahmedabad location and not in any other state. There is no mandatory requirement of receiving input invoices on the registered address of the company for availing cenvat credit. They have also submitted CA certificate vide letter dated 04.02.2020 stating that the services have been utilized in Ahmedabad location and input tax credit at other locations has not taken. Mentioning of complete registered address of service receiver on the input invoices is not a mandatory requirement and there is no specific legal provision restricting the input tax credit to invoices issued only at the registered place of business and the same should be considered as procedural lapse. Reliance is placed on various judgments viz. (i) mPortal India Wireless Solutions Private Limited Vs. Commissioner of Service Tax [2002 (27) STR 134 (Kar) (HC-Karnataka) (ii) D.A. Stuart India Pvt. Ltd. Vs.

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

(a) *Whether there is short payment of service tax amounting to Rs. 1,26,81,462/- on account of non-declaration of certain income in the ST-3 returns which was noticed on reconciliation of income as per books of account with those declared in service tax returns.*

(b) *Whether there was wrong availment of Cenvat Credit amounting to Rs. 1,07,413/- on invoices issued to other units.*

(c) *Whether there was wrong availment of Cenvat Credit amounting to Rs. 39,13,604/- without proper documents.*

(d) *Whether penalties imposed on the appellant was legal or otherwise.*

6. It is observed that audit of records of the appellant was carried out by the departmental officers for period FY 2014-15 to 2016-17 and discrepancies were communicated vide FAR No. 1576-2018-19 - Service Tax dated 4.4.2019 which has resulted in to issuance of SCN. The adjudicating authority has confirmed the demand raised in the SCN, except for the demand on legal service. The appellant is in appeal for the confirmed portion of demand in the impugned order.

6.1 As regards the demand of Rs. 1,26,81,462/- on account of short payment of service tax noticed on reconciliation of income, as declared in ST-3 Returns for the period vis-à-vis their financial records, it is observed that the appellant has submitted that they had inadvertently not reported non-taxable turnovers in the service tax returns, under mistaken belief that only taxable turnover was required to be reported. The details of such turnovers not reported in the service tax returns filed during the relevant year is as under:

(1) Exempted Services/Services covered under the Negative List under Section 66D of the Finance Act, 1994 amounting to Rs. 4,76,74,466/- ,comprising of different components as under:

- Air freight Charges (total Rs. 6,54,583/-) on import of goods in India to domestic customer: During the period from 01.04.2014 to 31.05.2016, the said service was included under the negative list under Section 66D of the act. Post 1st June, 2016, the Notification No. 25/2012 dated 20.06.2012 was amended to include the above entry.
- Sea freight/Air freight Charges (total Rs. 4,56,19,101/-) on export of goods by domestic customer: In terms of Rule 10 of the Place of Provision of Service Rules, 2012, the place of provision of

services in case of transportation of goods shall be the place of destination of goods. Accordingly, in case of export of goods, the place of provision of service shall be outside India and hence the same shall not be taxable in India.

- Sea freight charges (total Rs. 14,00,782/-) in case of import of goods to domestic customers: The same falls under negative list and hence service tax was not leviable thereon.

(2) Export of services amounting to Rs.3,20,50,835/- comprising of different components as under:

- Destination charges in case of export of goods to foreign customer of Rs. 1,55,168/-. As per Rule 4 of the Place of Provision of Services Rules, 2012, the place of provisions of services would be the place where activities are actually performed i.e. outside India. Accordingly, it qualifies as export of services in terms of the condition of Rule 6A of the Service Tax Rules, 1994.
- Air Freight and Sea Freight charges in case of export of goods to foreign customer amounting to Rs. 3,18,95,667/-. As per Rule 10 of the Place of Provision of Services Rules, 2012, the place of provisions of services in case of transportation of goods shall be the place of destination of goods and hence, it qualifies as export of services in terms of the condition of Rule 6A of the Service Tax Rules, 1994. The appellant has also received the payments in convertible foreign exchange.

(3) Reimbursement of statutory fees amounting to Rs. 4,82,364/-.

- The said reimbursements pertain to certain government fees incurred by the Company on behalf of the customers as pure agent and are recovered on actual basis during the relevant period. Since the same received on actual basis as pure agent, such reimbursement will not be liable to service tax in terms of Rule 5 of Service Tax (Determination of Value) Rules, 2006.

(4) Supply of Services to SEZ Unit of Rs. 42,37,312/-.

- As submitted, the appellant has provided services to its one of its customers (Banco Products India Limited) located in SEZ unit. As per Notification No. 12/2013-Service Tax dated 01.07.2013, a service provider is not required to pay service tax on the services provided to a SEZ unit provided the services are used by SEZ unit for authorized operations.

(5) Income reported in ST return of Maharashtra state but appearing in trial balance sheet of state of Gujarat amounting to Rs. 6,48,474/-.

- The application for obtaining service tax registration for Gujarat was made on 18.10.2019 which was approved with effect from 19.12.2014. During the transit period, the invoices were raised from Gujarat in respect of the services provided from Gujarat but in absence of service tax registration number for Gujarat, the said transactions were inadvertently reported in the returns filed for the state of Maharashtra and the tax has also been discharged from there only.

(6) Accrued Income of total Rs. 8,79,146/-.

- As submitted, the income was merely accrued in the books of accounts, however invoice was not raised in the relevant period. Therefore, as per the Rule 3 of Point of Taxation of Rules, 2011, they were not liable to pay service tax on the said accrual income in the relevant period. The service tax, if applicable was discharged in subsequent years as and when invoice was raised.

(7) Turnover appearing in trial balance in FY 2015-16 amounting to Rs. 1,00,078/-, but invoice raised in FY 2016-17-: Service tax was paid in year in which invoice was raised.

(8) Turnover appearing in trial balance in FY 2016-17 amounting to total Rs. 2,31,483/-, but invoice raised in FY 2015-16 and service tax was also paid in 2015-16.

(9) Sea imports turnover reported in return at abated value instead of gross value which resulted into difference of Rs. 4,20,816/-.

- As per entry no. 10 of Notification No. 26/2012 dated 20.06.2012, abatement of 70% of value of service was provided to service provider in case of sea import of goods with effect from 1st June, 2016. Accordingly, they has paid service tax on the amount after abatement and disclosed the abated value in service tax returns instead of gross value under heading clearing and forwarding agent service, resulted into the aforesaid difference.

(10) Other Miscellaneous adjustments amounting to total Rs. 1,27,726/-.

(11) The appellant has accepted that a difference of Rs. 15,09,439/- is towards the services provided by them to their customers which were leviable to service tax as per Section 65B(44) of the Act but they have not deposited service tax thereon.

6.2 I find that the appellant have admitted that they had not reported certain turnovers in service tax return filed during the relevant period, and have also admitted that the variance in taxable income reported in service tax returns and income reported in trial balance is amounting to Rs. 15,09,439/- only. They have submitted a table showing reconciliation of income disclosed in service tax return vis-à-vis income as declared in trial balance alongwith sample invoices furnished in reply to the SCN in support of their contentions backed by a Certificate by Chartered Accountant. However, they have not submitted any details/list of the invoices in support of the summarized revenue shown against the particular head of service and other relevant documents such as ledger, contract, agreement, work orders, bank statements etc. so that the quantification as submitted by the appellant can be verified. Merely producing sample invoices against each head or CA certificate regarding authenticity of reconciliation statement cannot be accepted as such in absence of any supporting documents.

6.3 Further, I find that in absence of verification about the genuineness of quantification of the revenue shown against a particular service head, the claims of appellant regarding non taxability of services or export of services or exemption and abatements cannot be taken at its face value and hence, not sustainable. The Apex Court has also held in the case of Mysore Metal Industries [1988 (36) ELT 369 (SC)] that the burden is on the party who claims exemption, to prove the facts that entitled him to exemption. I also find that the approach of the appellant, not to produce any substantial evidences in the forms of documents such as invoices, ledger, contract & agreements, work orders, bank statement etc. during the adjudication process by the adjudicating authority is not acceptable.

6.4 Further, it is observed that in absence of any substantial evidence produced by the appellant, the adjudicating authority had while passing the impugned order has not accepted the claim of non-taxability of services or export of services or exemption and abatements in respect of the amounts not shown by the appellant in the service tax return.

6.5. It is pertinent to mention in this context that the demand has been made on the basis of audit of the records of the appellant and that the appellant has not submitted records relevant for audit in time, which is also a point raised during the audit and proposal for penalty made in the SCN. As the appellant has claimed major portion of the demand on this issue under exempted category backed by sample invoices, for which no finding has been recorded by the adjudicating authority, it would be in the interest of justice that the matter is remanded back to the adjudicating authority to examine the contention of the appellant after following the principles of natural justice. Further, the appellant is directed to produce the relevant documents in support of their claims for exemption before the adjudicating authority so as to examine the matter on merits.

7. As regards confirmation of demand in respect of Cenvat Credit amounting to Rs. 1,07,413/- by the appellant on the basis of invoices issued to the office of the appellant situated at Gurgaon and Mumbai or on the basis of invoices not bearing the service tax registration numbers, the appellant has submitted that the aforesaid credit has been claimed only at Ahmedabad location and not in any other state. It was also contended that there is no mandatory requirement of receiving input invoices on the

registered address of the company for availing cenvat credit. They also submitted CA certificate vide letter dated 04.02.2020 certifying the input tax credit in relation to the invoices addressed to different location has only been availed in Ahmedabad registration and has been used for authorized operations of Ahmedabad.

7.1 It is observed that in terms of the provisions of sub-rule (1) of Rule 4A of the Service Tax Rules, 1994 read with Rule 9 (2) of the Cenvat Credit Rules, 2004, the registered address of the company on the input invoices is mandatory. Further, I find that sub-rule (2) of Rule 9 of the Cenvat Credit Rules, 2004, provides that no Cenvat Credit shall be taken unless all the particulars as prescribed under the Service Tax Rules, 1944 are contained in the duty paying documents referred in sub-rule (1) of Rule 9 of the Cenvat Credit Rules, 2004 **provided** that if the said document does not contain all the particulars but contains the details of service tax payable, description of the taxable service, assessable value, Service Tax registration number of the person issuing the invoice, name and address of the provider of the output service, and the jurisdictional Deputy/Assistant Commissioner of Central Excise is satisfied that service covered by the said document has been received and accounted for in the books of the account of the receiver, he may allow the Cenvat Credit.

7.2 I find that in terms of the proviso to sub-rule (2) of Rule 9 of the Cenvat Credit Rules, 2004, the Jurisdictional Assistant Commissioner was directed by the adjudicating authority to verify the correctness and admissibility of the Cenvat Credit taken by the appellant and the JAC vide his letter dated 10.01.2020 submitted that the assesse had not submitted year wise list of invoices on which Cenvat Credit was availed. Further, I find that the appellant has not produced any records in respect of receipt and consumption of the input services as envisaged under Rule 9 (6) of the Cenvat Credit Rules, 2004. It is also observed that as per the second proviso to sub-rule (7) of Rule 4 of Cenvat Credit Rules, 2004, the assesse is eligible for Cenvat Credit only when the payment of the value of input service and the service tax paid or payable as indicated in the invoice is made to the service provider, however, as mentioned in the impugned order, the appellant has not produced any records to prove that the payment of the value of input service and the service tax paid or payable as indicated in the invoice is made to the service provider. Accordingly, I find that in absence of substantial documentary evidence produced by the appellant to conduct

necessary verification of conditions of the abovementioned provisions, the adjudicating authority vide impugned order rightly concluded his findings that the appellant has availed Cenvat Credit wrongly on the basis of ineligible invoice.

7.3 However, the issue involves verification of records and the appellant has claimed to have availed CENVAT correctly in terms of legal provisions, it would be in the interest of justice to give a last opportunity to the appellant to produce the relevant documents viz. respective input invoices, ledger and such other documents to the satisfaction of the adjudicating authority for conducting verification in the matter and to decide the admissibility of the Cenvat Credit taken by them on merits, Accordingly, I remand the matter back to the adjudicating authority to pass a fresh order on the issue after following the principle of natural justice and conducting suitable verification of quantitative details as well as examining the merits of the contention of the appellant in respect of availment of the said Cenvat Credit.

8. As regards confirmation of demand with respect to availment of Cenvat Credit amounting to Rs. 39,13,604/- without proper documents, it is observed that the appellant had produced sample input invoices before the adjudicating authority to substantiate their eligibility to claim cenvat credit in respect of the services that have been procured and utilized for providing output service. Further, I find that they have also produced copy of cenvat credit register for the relevant period. It is further observed from the impugned order that the adjudicating authority has denied the contention of the appellant on grounds that they had not submitted year-wise list of invoices on which cenvat credit was availed; that they had not produced any records in respect of receipt and consumption of the input services, as envisaged under Rule 9 (6) of the Cenvat Credit Rules, 2004; that no records have been produced to prove that the payment of the value of input service and the service tax paid or payable as indicated in the invoice is made to the service provider.

8.1 Accordingly, I find that the appellant had not produced substantial documentary evidences before the adjudicating authority except for the sample invoices in support of their contention that they have availed cenvat credit on the basis of valid documents and in all cases, the conditions of the Cenvat Credit Rules, 2004 are fulfilled. Hence, the adjudicating authority has rightly disallowed the CENVAT Credit. However, it is also observed that

substantial amount of cenvat credit has been disallowed only on the grounds that the proper documentary evidences have not been produced by the appellant at the relevant time and still as per the grounds of appeal, the appellant is reiterating that they had fulfilled all the conditions and availed subject cenvat credit on the basis of valid documents. Hence, it would be in the interest of justice that the matter is remanded back to the adjudicating authority to examine the matter afresh on merits based on documentary evidences after following principles of natural justice.

9. Further, as regards the contention of the appellant on the issue of limitation and invoking extended period on the ground of suppression of facts, I do not find it proper to examine the said issue at this juncture when the substantial issues in question are being remanded to the adjudicating authority. The appellant is free to raise this issue before the adjudicating authority.

10. As regards the penalty amount of Rs. 1,21,600/- imposed under Section 77 (1) (c) of the Finance Act, 1994 by the adjudicating authority, I find that as per said provision of the Finance Act, 1994, any person, who fails to furnish information called by an officer in accordance with the provisions of this Chapter or rules made there under or who fails to produce documents called for by a Central Excise Officer in accordance with the provisions of this Chapter or rules made there under or who fails to appear before the Central Excise Officer, when issued with a summon for appearance to give evidence or to produce a document in an inquiry, shall be liable to a penalty which may extend to ten thousand rupees or two hundred rupees for everyday during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance.

10.1 In the present case, it is fact on records that the assesee was asked to produce the records which they were statutorily required to maintain for running their business vide letter dated 13.07.2017 followed by series of reminders and summons also. Further, it is observed that the documents called for vide letter dated 13.07.2017 were submitted by the appellant vide letter and mail dated 10.01.2018, 15.02.2018, 24.05.2018 and 27.06.2018 which shows that the appellant has taken a time of about one year to submit the documents under partial compliance and documents called for vide the subsequent letters or summons required for verification have not been submitted by the appellant in time.

10.2 Further, it is observed that the appellant have requested for extension over e-mail and telephonic conversation from the officer due to limited resources in terms of manpower and time for extensive tax and finance compliances. The appellant has also submitted that they had decentralized registration in nine states involving compliances at state level and also due to multiple registration under service tax regime, they missed inadvertently to provide the clarifications.

10.3 It is also observed that the appellant has offices at multiple locations and has good volume of business in terms of turnover and hence, the paucity of manpower cannot be a valid ground for non-compliance of statutory requirement. Moreover, this plea is also not acceptable in view of the fact that timely compliance is mandated by law and any deviation from it would amount to non-cooperation and as result would attract the penalty provisions. Accordingly, I do not find any force in the contention of the appellant against the penalty imposed under Section 77 (1) (c) of the Finance Act, 1994 by the adjudicating authority vide the impugned order.

11. On careful consideration of the relevant legal provisions, judicial pronouncements and submission made by the appellant, I passed the Order as below:

(i) I do not find any merit in the contention of the appellant against the penalty of Rs. 1,21,600/- imposed under Section 77 (1) (c) of the Finance Act, 1994 as discussed in para-10.3 above. Hence, I uphold the impugned order passed by the adjudicating authority to that extent.

(ii) As regards the demand of Service Tax amounting to Rs. 1,26,81,462/- confirmed vide the impugned order on the differential income not disclosed in the ST-3 returns, as discussed in above para-6.5, I remand the matter back to the adjudicating authority to examine the contention of the appellant after following the principles of natural justice for consideration on merits.

(iii) Further, as regards the demand of Service Tax amounting to Rs. 1,07,413/- and Rs. 39,13,604/- confirmed vide the impugned order towards the wrong availment of Cenvat Credit, as discussed in para-7.3 and para-8.1 above, I remand the matter back to the

adjudicating authority to examine it afresh on merits based on documentary evidences after following principles of natural justice.

(iv) Further, the impugned order as regards the penalty imposed of Rs. 1,26,81,462/- and Rs. 40,21,017/- under the provisions of Section 78 of the Finance Act, 1994 read with the provisions of Rule 15 (3) of the Cenvat Credit Rules, 2004 is also remanded back to that extent for fresh consideration by the adjudicating authority following the principles of natural justice.

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

29th December, 2020.

(Akhilesh Kumar)
Commissioner (Appeals)

Attested

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

By Regd. Post A. D

M/s. Toll Global Forwarding (India) Private Limited,
B-1008, Infinity Tower,
Corporate Road, Near Prahladnagar,
Ahmedabad-380 015

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3. The Deputy /Asstt. Commissioner, Central GST, Division-VIII, Ahmedabad-South.
4. The Deputy/Asstt. Commissioner (Systems), Central Excise, Ahmedabad-South.
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