आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ीअहमदाबाद३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065 – टेलेफैक्स07926305136

DIN : 20221264SW000000B91A

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/776/2022 / 6500 - 6504

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-106/2022-23**
दिनाँक Date : **21-12-2022** जारी करने की तारीख Date of Issue 23.12.2022

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

ग Arising out of OIO No. **CGST-VI/Dem-04/GSEC Aviation/DAP/21-22** दिनाँक: **31.01.2022** passed by The Assistant Commissioner, CGST, Division VI, Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s GSEC Aviation Ltd
2nd Floor, Gujarat Chambers Building,
Ashram Road, 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 :

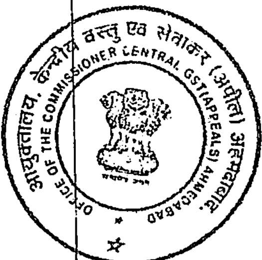
Revision application to Government of India:

(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 हानिकार खाने 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 मे हो माल की प्रकिया के दौरान हुई हो।

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



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

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

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

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

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

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

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए।उसके साथ खाता इ.का मुख्य शीर्ष 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 होतो रूपये 200/-फीस भुगतान की जाए और जहाँ संलग्नरकम 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 सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

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

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

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलों 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 होत 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू.6.50 पैसे कान्यायालय 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 is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(72) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(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 सेवाकर 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.

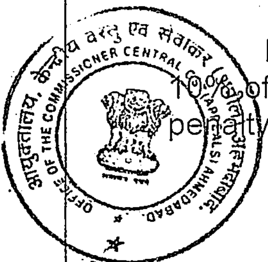
⇨ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है.

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:

(ccxxiii) amount determined under Section 11 D;
(ccxxiv) amount of erroneous Cenvat Credit taken;
(ccxxv) 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. GSEC Aviation Limited, 2nd Floor, Gujarat Chamber of Commerce Building, Ashram Road, Ahmedabad – 380 009 (hereinafter referred to as the appellant) against Order in Original No. CGST-VI/Dem-04/GSEC Aviation/DAP/21-22 dated 31.01.2022 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, Division – VI, CGST, Commissionerate : Ahmedabad South [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant were holding Service Tax Registration No. AACCG8636 RST001 and engaged in providing Transport of Passengers embarking on Domestic/International journey by Air, Business Auxiliary Services and Tour Operator Services. During the course of Audit of the records of the appellant for the period from April, 2014 to June, 2017 conducted by the Officers of Central Tax Audit Commissionerate, Ahmedabad, the observations were raised and the same are enumerated below :

a) **Revenue Para 1** : Short Payment of Service Tax amounting to Rs.4,46,280/- for F.Y. 2014-15 and F.Y.2016-17 on the basis of reconciliation of income.

b) **Revenue Para 2** : Non-reversal of cenvat credit amounting to Rs.71,355/- in respect of common inputs used in exempted services (Trading) during F.Y. 2014-15 and F.Y. 2016-17.

c) **Revenue Para 3** : Wrong availment of cenvat credit amounting to Rs.4,88,250/- in respect of Outdoor Catering during F.Y. 2014-15.

d) **Revenue Para 4** : Non payment of service tax amounting to Rs.47,319/- on Legal Consultancy service under reverse charge during F.Y. 2014-15 and F.Y. 2015-16.

e) **Revenue Para 5** : Non payment of service tax amounting to Rs.37,845/- on fees paid to Ministry of Corporate Affairs, under reverse charge, during F.Y. 2015-16.

f) **Revenue Para 6** : Non Payment of service tax amounting to Rs.7,40,539/- in respect of import of services, under reverse charge, during F.Y. 2014-15 and F.Y. 2015-16.

3. The appellant was, subsequently, issued a Show Cause Notice bearing No. 133/2019-20 dated 27.09.2019 from F.No. VI/1(b)-460/Cir.-III/AP-17/2018-19 wherein it was proposed to :

a) Recover service tax amounting to Rs.4,46,280/- under the proviso to Section 73 (1) of the Finance Act, 1994 and appropriate the service tax amounting to Rs.2,68,967/- paid by them.
b) Recover Interest under Section 75 of the Finance Act, 1994 and appropriate the interest amounting to Rs.83,573/- paid by them.
c) Impose penalty under Section 78(1) of the Finance Act, 1994 and appropriate the penalty amounting to Rs.23,912/- paid by them.
d) Recover service tax amounting to Rs.8,25,703/- (Revenue Para 4 to 6) under the proviso to Section 73 (1) of the Finance Act, 1994.
e) Recover Interest under Section 75 of the Finance Act, 1994.
f) Impose penalty under Section 78(1) of the Finance Act, 1994.
g) Disallow and recover the wrongly taken cenvat credit amounting to Rs.5,59,605/- (Revenue Para 2 & 3) under Rule 14(1)(ii) of the Cenvat Credit Rules, 2004 read with the proviso to Section 73 (1) of the Finance Act, 1994.
h) Recover Interest under Rule 14 (1) (ii) of the Cenvat Credit Rules, 2004 read with Section 75 of the Finance Act, 1994.
i) Impose penalty under Rule 15(3) of the Cenvat Credit Rules, 2004 read with Section 78(1) of the Finance Act, 1994.

4. The SCN was adjudicated vide the impugned order wherein the demand of service tax and cenvat credit were confirmed along with interest. Penalty equivalent to the service tax confirmed and the cenvat credit confirmed were imposed under Section 78(1) of the Finance Act, 1994. The amounts paid by the appellant were also appropriated in the impugned order.

5. Being aggrieved with the impugned order, the appellant have filed the present appeal on the following grounds :

i. The service tax demanded and confirmed on the basis of reconciliation of their income is not correct. If the factual details were taken into account, there was no such liability. The working of the department is required to be reworked, details of the reconciliation is enclosed.

ii. Reliance is placed upon the judgment in the case of Regional Manager, Tobacco Board Vs. Commissioner of C.Ex., Mysore – 2013 (31) STR 673 (Tri.-Bang.); Anvil Capital Management (P) Ltd. Vs. Commissioner of Service Tax, Mumbai – 2010 (20) STR 789 (Tri.-Mumbai); Commissioner of Service Tax, Ahmedabad Vs. Purni Ads. Pvt. Ltd. – 2010 (19) STR 242 (Tri.-Ahmd.); Sify Technologies Ltd. Vs. Commissioner of Service Tax, Chennai – 2009 (16) STR 63 (Tri.-Chennai); Bhogilal Chhagulal & Sons Vs. Commissioner of Service Tax, Ahmedabad – 2013 (30) STR 62 (Tri.-Ahmd.).

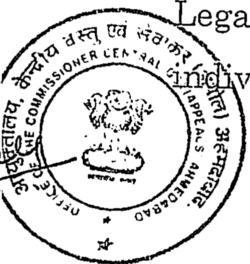
iii. They are providing both taxable as well as exempt services and they have opted for Rule 6 (3) of the CCR, 2004 and reversed cenvat credit proportionately from time to time. So, there is no question of availing cenvat credit of the exempted services and separate reversal of cenvat credit.

iv. Regarding cenvat credit availed in respect of Outdoor Catering, attention is drawn towards Rule 2(l) of the CCR, 2004. Further, the cenvat credit was taken for various educational programmes held for the Custom CHAs by them, which are part of the marketing and promotional activities for the various services rendered by them. As per the definition of input service, the services used for building brand image, marketing and promotion are considered as input service.

v. Reliance is placed upon the judgment in the case of Citizen Cooperative Bank Ltd. Vs. Commissioner of C.Ex., & ST, Noida - 201– (50) STR 10 (Tri.-All.) and Commissioner of C.Ex., Cus. And ST Vs. Gujarat Alkalies Chemicals Ltd. – 2018 (12) GSTL 26 (Guj.).

vi. Therefore, they had rightly availed cenvat credit of outdoor catering services.

vii. They had availed Consultancy services from retired aircraft engineer firm for purchase and leasing of aircraft. The persons from whom the services were availed are not advocates. For levying service tax under Legal Consultancy Service, the service must have been availed from individual advocate or a firm of advocates. As they have not availed the



service of Legal Consultancy, they were not liable for service tax as recipient.

viii. Regarding service tax under reverse charge in respect of fees paid to Ministry of Corporate Affairs, it is submitted hat they have paid the statutory fees to MCA and statutory fees are not covered under reverse charge. They have not availed any service of the Government, but paid statutory fees to MCA in compliance of ROC.

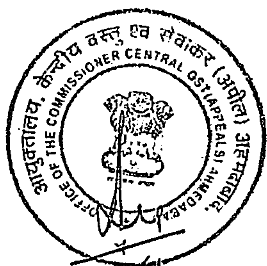
ix. Regarding service tax under reverse charge on import of service, it is submitted that their subsidiary company established at Dubai had availed telemarketing services from M/s.Base International Limited, Hong Kong. The services were availed outside India and they had made payment to Base International Limited on behalf of their subsidiary. As there is no import of service, there would be no question of RCM liability of import of service.

x. As per Rule 3 of the Place of Provision of Service Rules, 2012, the location of the service recipient is to be considered as the place of provision. In the instant case, the service recipient is located outside India, so they are not liable for service tax under reverse charge. The payment was made only on behalf of their subsidiary company which was reimbursed to them subsequently by the subsidiary company.

xi. The SCN covers the period from 01.04.2014 to 30.06.2017 and was issued on 27.09.2019 by invoking the extended period. Extended period cannot be invoked as there is no suppression, wilful mis-statement on their part. No case of suppression, wilful mis-statement has been made out in the SCN.

xii. Penalty cannot be imposed under Section 78 of the Finance Act, 1994. They have demonstrated that they have not suppressed any information from the department and there was no wilful mis-statement on their part. They are entitled to entertain the belief that their activities were not taxable. That cannot be treated as suppression from the department. They rely upon the decision in the case of Steel Case Ltd. – 2011 (21) STR 500 (Guj.).

xiii. The issue involved is of interpretation of statutory provision and therefore, penalty cannot be imposed. They rely upon the decision in the case of :- Bharat Wagon &Engg. Co Ltd. Vs. Commissioner of C.Ex., Patna – (146) ELT 118 (Tri.-Kolkata); Goenka Woolen Mills Ltd Vs.



Commissioner of C.Ex., Shillong – 2001 (135) ELT 873 (Tri.-Kolkata); Bhilwara Spinners Ltd Vs. Commissioner of C.Ex, Jaipur – 2001 (129) ELT 458 (Tri.-Del).

6. Personal Hearing in the case was held on 07.12.2022. Shri Vipul Khandhar, Chartered Accountant, appeared on behalf of appellant for the hearing. He reiterated the submissicns made in appeal memorandum. He submitted a written submission during the hearing and reiterated submissions made therein.

7. In their written submission filed on 07.12.2022, the appellant reiterated the submissions made in their appeal memorandum.

8. I have gone through the facts of the case, submissions made in the Appeal Memorandum as well as submissions made at the time of personal hearing and the material available on records. The issues before me for decision are :

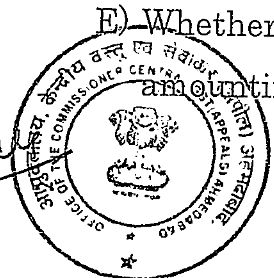
A) Whether the impugned order confirming the demand of service tax amounting to Rs.4,46,280/-, for F.Y. 2014-15 and F.Y.2016-17, in respect of the differential income found on reconciliation is legal and proper or otherwise.

B) Whether the impugned order confirming the demand of service tax amounting to Rs.47,319/-, for F.Y. 2014-15 and F.Y. 2015-16, under reverse charge in respect of Legal Consultancy Services, is legal and proper or otherwise.

C) Whether the impugned order confirming the demand of service tax amounting to Rs.37,845/-, for F.Y. 2015-16, under reverse charge in respect of the fees paid to Ministry of Corporate Affairs, is legal and proper or otherwise.

D) Whether the impugned order confirming the demand of service tax amounting to Rs.7,40,539/-, for F.Y. 2014-15 and F.Y. 2015-16, under reverse charge in respect of Import of Services, is legal and proper or otherwise.

E) Whether the impugned order confirming demand of cenvat credit amounting to Rs.71,355/-, for F.Y. 2014-15 and F.Y. 2016-17, in respect of



common inputs used in exempted services (Trading) is legal and proper or otherwise.

F) Whether the impugned order confirming the cenvat credit amounting to Rs.4,88,250/-, for F.Y. 2014-15, in respect of Outdoor Catering is legal and proper or otherwise.

9. As regards the issue of demand of service tax in respect of the differential income observed during reconciliation of income with ST-3 returns vis-à-vis their financial records, it is observed that the appellant have, except for contending that the department has not considered the factual position, not submitted any document or evidence in support of their contention. It is also observed that the adjudicating authority has, at Para 16 of the impugned order, recorded the finding that "*The assessee has not submitted any documents substantiating their claim neither prior to issuance of SCN before the audit officers nor during the personal hearing.*"

9.1 The appellant have, in their appeal memorandum and the submissions made during course of the personal hearing, not made any submissions regarding the reasons for the differential income noticed on reconciliation of the financial statements with the ST-3 returns filed by them. The appellant have in their appeal memorandum and additional written submission submitted a reconciliation statement. I have perused the reconciliation statement and find that no explanation to the difference in taxable value, detected in the course of the audit, is forthcoming. It is observed that as per the reconciliation statement, which is stated to be on Mercantile/Cash basis, the appellant have admitted to a difference in the income reported by them in the ST-3 returns vis-à-vis their Books of Accounts for F.Y.2014-15. The service tax payable on this differential income is Rs.2,48,900/-, which is the service tax demanded in the SCN for F.Y. 2014-15. Similarly, for F.Y. 2016-17, the reconciliation statement shows that the net service tax payable on the differential income amounts to Rs.95,278/-, after adjusting payment of Rs.59,678/- as tax through cenvat credit. The appellant have, however, not submitted any document to substantiate the difference in income and the service tax admitted to be payable by them. Since the appellant have not come forward with any tenable reason explaining the difference in taxable value either before the adjudicating authority or in their appeal memorandum, I do

not find any infirmity in the impugned order confirming the demand of service tax in the impugned order. Accordingly, I uphold the impugned order confirming the demand of service tax amounting to Rs.4,46,280/-.

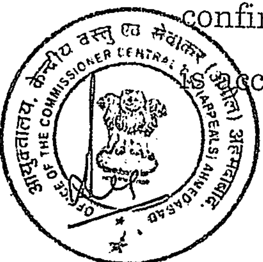
10. Regarding the issue of demand of service tax amounting to Rs.47,319/-, under reverse charge, in respect of Legal Consultancy Services, it is observed that the appellant have contended that they had availed services of a retired aircraft engineer firm and that the services were not availed from an individual advocate or an advocate firm. The appellant have, along with their appeal memorandum, submitted copy of letter dated 03.07.2015 of M/s.Advaya Legal addressed to the appellant. The subject of the said letter is clearly stated as "*Proposal for legal services in relation to purchase of and leasing of an Aircraft by GSEC Aviation Limited*". It is further observed that the said firm in their official website at https://www.advayalegal.com/ introduce themselves as "Advaya Legal is a full service commercial law firm in India". Clearly, the contention of the appellant is demolished by the very document submitted by them. As the services availed by the appellant are in the nature of Legal Consultancy Services, the same is covered by Serial No.5 of Notification No.30/2012-ST dated 20.06.2012 and, accordingly, the appellant are liable to pay 100% of the service tax leviable, under reverse charge, as recipient of the service. Accordingly, I do not find any infirmity in the impugned order confirming the demand of service tax, and hence, the same is upheld.

11. Regarding the demand of service tax amounting to Rs.37,845/-, under reverse charge in respect of the fees paid to Ministry of Corporate Affairs, the appellant have submitted copies of the Receipt issued by the Ministry of Corporate Affairs. On examining the same, it is observed that the appellant had paid Fees to the Ministry of Corporate Affairs for ' Increase in Authorised Capital'. For increasing the Authorized Capital, a company is required to file eForm SH-7 and eForm MGT-14 along with the prescribed fees with the Registrar of Companies. The filing with the Registrar of Companies is in compliance with the provisions of law and fees to be paid at the time of filing is a statutory fee. Neither the Registrar of Companies nor the Ministry of Corporate Affairs provide any service to the company filing the prescribed forms. As no service is being provided, the question of levy of service tax, under reverse charge, does not arise. The adjudicating authority has clearly erred in

concluding at Para 39 of the impugned order that services are provided to the appellant by the Government. Therefore, the impugned order confirming the demand of service tax amounting to Rs.37,845/- along with interest and penalty is set aside as not being legal and proper.

12. As regards the issue of demand of service tax amounting to Rs.7,40,539/-, under reverse charge, in respect of Import of Services, the appellant have claimed that the services were availed by their subsidiary located in Dubai from firms outside India and that they had merely paid the service providers and that the same was subsequently reimbursed by their subsidiary. In this regard, I find that the appellant have submitted copies of two SWIFT messages indicating remittance of funds by them to M/s.Global Business Services DMCC, Dubai. They have also submitted copy of the Ledger Account of M/s.Base International Limited for March, 2015. Except for these documents, the appellant have not submitted any documentary evidence, either with their appeal memorandum or before the adjudicating authority, in support of their contention that the services of the overseas firm were not availed by them. Therefore, I do not find any merit in their contention and the same is accordingly rejected as being unsubstantiated. Accordingly, the impugned order confirming the demand of service tax amounting to Rs.7,40,539/- is upheld.

13. Regarding the demand of cenvat credit amounting to Rs.71,355/- in respect of common inputs used in exempted services (Trading), the appellant have contended that they had opted for Rule 6 (3) of the CCR, 2004 and reversed the credit proportionately from time to time. The demand for cenvat credit was raised against the appellant based on the observations of the Audit officer, who has raised the issue after verification and audit of the records of the appellant. The appellant have, in support of their contention regarding following of Rule 6 (3) of the CCR, 2004, not submitted any documentary evidence in support of their contention and neither have they submitted any documents or details showing that they had reversed the cenvat credit proportionately. Therefore, I do not find infirmity in the impugned order confirming the demand of cenvat credit amounting to Rs.71,355/- and the same is accordingly upheld.



14. Regarding the demand of cenvat credit amounting to Rs.4,88,250/-, in respect of Outdoor Catering, the appellant have contended that the service of Outdoor Catering was used by them in the various educational programs held for Customs CHA and that the same was part of their Marketing and Promotional activities for the various services provided by them. The adjudicating authority has at Para 24 of the impugned order recorded his finding that " *I find that the provisions of Rule 2 (l) (C) of the Cenvat Credit Rules, 2004 is explicit in saying that cenvat credit could not be availed on services provided in relation to outdoor catering*". It has further been observed at Para 25 of the impugned order that "*The noticee also failed to establish any relation between the outdoor catering service as input service used in relation to output service provided*".

14.1 The text of Rule 2 (l) (C) of the CCR, 2004 is reproduced below :

> "C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;';"

14.2 In view of the specific exclusion of outdoor catering from the definition of input services, cenvat credit in respect of the same is not admissible. The appellant have cited two judgment in support of their contention that they are eligible to cenvat credit in respect of the outdoor catering services. I have perused the said judgments and find that the same were in the context of Rule 2(l) of the CCR, 2004 prior to its amendment w.e.f. 01.04.2011 vide Notification No.3/2011-CE (NT) dated 01.03.2011. Therefore, the said judgments do not apply to the facts and circumstances of the present case involving the amended Rule 2 (l) of the CCR, 2004, which specifically excludes outdoor catering from the definition of input services. In view thereof, I am of the considered view that the adjudicating authority has correctly disallowed and confirmed the demand of cenvat credit amounting to Rs. 4,88,250/-, in respect of Outdoor Catering. Accordingly, the impugned order to that extent is upheld.

15. The appellant have also raised the issue of limitation and contended that the extended period of limitation cannot be invoked in the present case. In this regard, I find that the adjudicating authority has, at Para 45 of the impugned

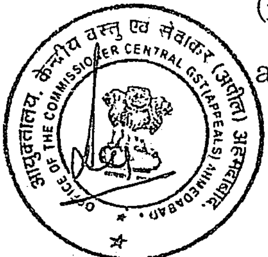
order, dealt with the contentions of the appellant on the issue of limitation. The appellant have in their appeal memorandum not refuted the findings of the adjudicating authority. Further, the facts about their correct taxable value of service, non payment of service tax and wrong availment of cenvat credit were suppressed from the department. The fact of the appellant not declaring the correct taxable value as well as not paying the applicable service tax on the taxable services provided by them were unearthed only in the course of the audit on the records of the appellant carried out by the departmental officers. But for the audit on the records of the appellant, the non payment of service tax by mis-stating the facts by the appellant in respect of the service provided by them and thereby wrongly claiming exemption to which they were not eligible, would not have been unearthed. The only reason behind suppressing such facts from the department is attributable to the intent of the appellant to evade payment of service tax. Therefore, the extended period of limitation was rightly invoked in raising demand against the appellant by the impugned SCN.

16. Section 78 (1) of the Finance Act, 1994 provides for imposition of penalty in cases where service tax has not been paid or short paid by reason of fraud, collusion or wilful mis-statement or suppression of facts or contravention of the provisions of the Act or the Rules framed thereunder. Since the appellant have not paid/short paid service tax by indulging in wilful mis-statement and suppression of facts with the intent to evade payment of service tax, the invocation of extended period has been upheld. Accordingly, they are also liable for penalty under Section 78 (1) of the Finance Act, 1994 and the adjudicating authority has rightly imposed penalty upon the appellant under the said Section. Therefore, I do not find any reason to interfere with the impugned order imposing penalty under Section 78(1) of the Finance Act, 1994.

17. In view of the discussions hereinabove, I uphold the impugned order to the extent mentioned below :

(i) Confirmation of demand of service tax amounting to Rs.4,46,280/-, Rs.47,319/- and Rs.7,40,539/- along with interest under Section 75 of the Finance Act, 1994.

(ii) Confirmation of demand of cenvat credit amounting to Rs.71,355/- and Rs.4,88,250/-.



(iii) Imposition of penalty under Section 78 (1) of the Finance Act, 1994 equal to the demand confirmed.

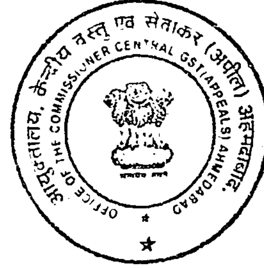
(iv) Ordering recovery of interest under Section 75 of the Finance Act, 1994.

18. I set aside the impugned order insofar as it pertains to confirmation of demand of service tax amounting to Rs.37,845/- in respect of the Fees paid to Ministry of Corporate Affairs along with interest under Section 75 and Penalty under Section 78(1) of the Finance Act, 1994.

19. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

(Akhilesh Kumar)
Commissioner (Appeals)
Date: 21.12.2022.



Attested:

(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.

BY RPAD / SPEED POST

To

M/s. GSEC Aviation Limited,
2nd Floor, Gujarat Chambers Building,
Ahmedabad – 380 009 — Appellant

The Assistant Commissioner,
CGST, Division- VI,
Commissionerate : Ahmedabad South. — Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (HQ System), CGST, Ahmedabad South. (for uploading the OIA)
4. Guard File.
5. P.A. File.