आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हॉउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009		Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1st Floor) Navrangpura, Ahmedabad-380009

फ़ोन नंबर./ PHONE No.: 079-2754 4599 फैक्स/ FAX : 079-2754 4463 E-mail:- oaahmedabad2@gmail.com

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. STC/15-46/OA/2020 DIN-20211264WT0000999B6D

आदेश की तारीख़ / Date of Order :25.11.2021

जारी करने की तारीख़ / Date of Issue :08.12.2021

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV

आयुक्त / COMMISSIONER

मूल आदेश संख्या / AHM-EXCUS-002-COMMR–38/2021-22

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR–38/2021-22

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

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2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण , द्वितीय तल, बाहुमली भवन असरवा, गिरधर नगर पुल के पास, गिरधर नगर, अहमदाबाद, गुजरात 380004 को संबोधित होनी चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan Asarwa, Near Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad, Gujarat 380004.

2.1 इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं विवादग्रस्त दंड शामिल है ।

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

(as per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

BRIEF FACTS OF THE CASE:

M/s. Nas Logistics, situated at 507, Sukh Sagar Complex, Nr. Hotel Fortune Landmark, Usmanpura, Ahmedabad, Naranpura Vistar, Ahmedabad-380013 (hereinafter referred to as the 'Assessee' for the sake of brevity) are registered under Service Tax having Service Tax Registration No. AUKPP3900EST001.

2. Analysis of "Sales/Gross Receipts from Services (Value from ITR)", the "Total Amount Paid/Credited under 194C,194H,194I,194J" and "Gross value of Services Provided" of the assessee was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y.2014-15,2015-16 & 2016-17, and details of said analysis were shared by the CBDT with the Central Board of Indirect Taxes & Customs (CBIC).

3. As per the records available with the Divisional office of Division-VII and on going through the Third party Data provided by CBDT of the said assessee for the F.Y. 2014-15, 2015-16 and 2016-17, the total sales of service (Value from ITR) were found to be not tallying with Gross Value of Service Provided, as declared in ST-3 Return for the F.Y. 2014-15, 2015-16 and 2016-17. Therefore, it appeared that the said assessee had declared less/not declared any taxable value in their Service Tax Returns (ST-3) for the F.Y. 2014-15, 2015-16 and 2016-17 as compared to the Service related taxable value declared in their Income Tax Return (ITR)/Form 26AS for the F.Y. 2014-15, 2015-16 and 2016-17. The difference in value as observed for FY 2014-15, 2015-16 and 2016-17 were found to be as under:

TABLE

(Amount in Rs.)

Sr No	F. Y.	Gross_Value_Service_Provided (as per ST-3 returns.	Difference Between value of services from ITR & Gross value in service tax provided	Resultant Service Tax short paid (including Cess)
1	2014-15	63,84,001/-	5,24,14,938/-	64,78,486/-

(Amount in Rs.)

Sr No	F. Y.	Total Sale of Service as per ITR	TOTAL GROSS VALUE PROVIDED (STR)	VALUE DIFFERENCE in ITR and STR	Resultant Service Tax short paid (including Cess)
1	2015-16	5,24,52,663/-	78,20,330/-	4,46,32,333/-	64,71,688/-

(Amount in Rs.)

Sr No	F. Y.	Total Sale of Service as per ITR	TOTAL GROSS VALUE PROVIDED (STR)	VALUE DIFFERENCE in ITR and STR	Resultant Service Tax short paid (including Cess)
1	2016-17	8,14,49,870/-	1,46,79,259/-	6,67,70,611/-	1,00,15,592/-

Therefore, it appeared that the said assessee had short paid service tax to the extent of Rs.2,29,65,766/-.

4. The assessee were requested to provide explanation for such difference and to submit documents in support thereof viz. Balance Sheet, Profit & Loss Account, Income Tax Returns, Form 26AS, Service Income and Service Tax Ledger and Service Tax Returns (ST-3) for the Financial Year 2014-15 vide letters dated 13.02.2018, 30.09.2019 and 06.07.2020 were issued to the said assessee. But, the assessee neither submitted any details/documents explaining such difference nor responded to the letters in any manner. Due to this reason, no further verification could be done in this regard by the department.

5. Since, the assessee had not submitted the required details of services provided during the Financial Year 2014-15 to 2016-17, the service tax liability was ascertained on the basis of income mentioned in the ITR returns and Form 26AS filed by the assessee with the Income Tax Department. The figures/data provided by the Income Tax Department was considered as the total taxable value in order to ascertain the Service Tax liability under Section 67 of the Finance Act, 1994.

6. No data was forwarded by CBDT for the period 2017-18 (upto June-2017) and the assessee also failed to provide any information regarding rendering of taxable service for this period. Therefore, at the time of issue of SCN, it was not possible to quantify short payment of Service Tax, If any, for the period from 2017-18 (upto June-2017).

7. Unquantified demand at the time of issuance of SCN.

Para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issue by the CBEC, New Delhi clarified that:

'2.8 Quantification of duty demanded: It is desirable that the demand is quantified in the SCN, however if due to some genuine grounds it is not possible to quantify the short levy at the time of issue of SCN, the SCN would not be considered as invalid. It would still be desirable that the principles and manner of computing the amounts due from the noticee are clearly laid down in this part of the SCN. In the case of Gwalior Rayon Mfg. (Wvg.) Co. Vs .UOI, 1982 (010) ELT 0844 (MP), the Madhya Pradesh High Court at Jabalpur affirms the same position that merely because necessary particulars have not been stated in the show cause notice, it could not be a valid ground for quashing the notice, because it is open to the petitioner to seek further particulars, if any, that may be necessary for it to show cause if the same is deficient.'

8. It appeared that the **"Total Amount Paid/Credited Under Section 194C,194H,194I,194J OR Sales/Gross Receipts From Services (From ITR)"** for the assessment year 2017-18 (upto June-2017) had not been disclosed thereof by the Income Tax Department, nor the reason for the non disclosure was made known to this department. The assessee had also failed to provide the required information even after the issuance of letters and summons from the Department. Therefore, the assessable value for the year 2017-18 (upto June-2017) was not ascertainable at the time of issuance of the Show Cause Notice. Consequently, if any other amount was to be disclosed by the Income Tax Department or any other sources/agencies, against the said assessee, action was to be initiated against the said assessee under the proviso to Section 73(1) of the Finance Act 1994 read with para 2.8 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017.

9. The government has from the very beginning placed full trust on the service provider so far as service tax is concerned and accordingly measures like Self-assessments etc., based on mutual trust and confidence are in place. From the evidence, it appeared that the said assessee had not taken into account all the income received by them for rendering taxable services for the purpose of payment of service tax and thereby evaded their tax liabilities. The service provider appeared to have made deliberate efforts to suppress the value of taxable service to the department and appeared to have not paid the liable service tax in utter disregard to the requirements of law and breach of trust reposed on them. Such outright act in defiance of law, appeared to have rendered them liable for stringent penal action as per the provisions of Section 78 of the Finance Act, 1994 for suppression or concealment or furnishing inaccurate value of taxable service with an intent to evade payment of service tax.

10. It appeared that the assessee had contravened the provisions of Chapter-V of the Finance Act, 1944, the Service Tax Rules, 2004, failed to declare correctly, assess and pay the service tax due on the taxable services provided by them and to maintain records and furnish returns, in such form i.e. ST-3 and in such manner and at such frequency, as required under Section 70 of the Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994; Section 67 of the Finance Act, 1994 in as much as they had failed to determine the correct value of taxable service provided by them as discussed above; Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 & 6 of the Service Tax Rules, 1994 in as much as they had failed to pay the Service Tax correctly at the appropriate rate within the prescribed time in the manner and at the rate as provided under the said provision. In the instant case, the

said assessee had not paid service tax as worked out in the Table for Financial Year 2014-15 to 2016-17. All the above acts of contravention on the part of the said assessee appeared to have been committed by way of suppression of facts with an intent to evade payment of service tax, and therefore, the said service tax not paid was required to be demanded and recovered from them under Section 73 (1) of the Finance Act, 1994 by invoking extended period of five years. All these acts of contravention of the provisions of Section 68, and 70 of the Finance Act, 1994 read with rule 6, and 7 of Service Tax Rules, 1994 appeared to be punishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time. The said assessee was also liable to pay interest at the appropriate rates for the period from due date of payment of service tax till the date of actual payment as per the provisions of Section 75 of the Finance Act, 1994.

11. It had been noticed that at no point of time, the assessee had disclosed full, true and correct information about the value of services provided by them or intimated to the Department regarding receipt/providing of Service of the differential value, that had come to the notice of the Department only after going through the third party CBDT data generated for the Financial Year 2014-2015 to 2016-17. It appeared that the said assessee had knowingly suppressed the facts regarding receipt of/providing of services by them worth the differential value as can be seen in the table hereinabove and thereby not paid / short paid/ not deposited Service Tax thereof to the extent of Rs. 2,29,65,766/- (including Cess). The same appeared to be recoverable under the provisions of Section 73(1) of the Finance Act, 1994 read with Notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST by invoking extended period of time, along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994 and penalty under Section 78 of the Finance Act, 1994.

12. Therefore a Show Cause Notice No. STC/15-46/OA/2020 dated 25.09.2020 was issued to M/s. Nas Logistics, 507, Sukh Sagar Complex, Nr. Hotel Fortune Landmark, Usamnpura, Ahmedabad by the Principal Commissioner, Central Excise & CGST, Ahmedabad North asking them as to why :

(i) The Service Tax to the extent of Rs. 2,29,65,766/- (Two Crore Twenty nine lakhs sixty five thousand seven hundred sixty six rupees) short paid /not paid by them, should not be demanded and recovered from them under the provisions of Section 73 of the Finance Act, 1994 read with Notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST;

(ii) Service Tax liability not paid during the financial year 2017-18 (upto June-2017), ascertained in future, as per paras no. 7 and 8 of SCN, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994.

(iii) Interest at the appropriate rate should not be demanded and recovered from them under the provisions of Section 75 of the Finance Act, 1994;

(iv) Penalty under the provisions of Section 77(1) and 77(2) of the Finance Act, 1994 amended, should not be imposed on them.

(v) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.

13. DEFENCE REPLY:

The assessee vide letter dated 23.10.2020 had submitted their written submission. The assessee had submitted that they were providing Clearing and Forwarding Agent Services, Business Auxiliary Service and Transport of Goods by Road/Goods Transport Agency Service. They had submitted the copies of Tax Audit Reports, Income Tax Returns, Form 26AS, ST3 returns for F.Y.2014-15, 2015-16 & 2016-17. They had further submitted that SCN was pertained to the period 2014-15, 2015-16 & 2016-17, and since they were working from home, they had requested for extension for further submission in the matter.

The assessee further, vide letter dated 08.10.2021 have submitted, that they deny all the allegations leveled against them in the SCN, that the SCN was frivolous, non-maintainable, arbitrary and far from facts. The allegations were based on assumptions and presumptions, conjectures and surmises, without any tangible evidence, which were not permissible under the law. They have submitted that notice was issued on the basis of Sales/Gross receipts from Services (ITR value) returns and data provided in 26AS. They have submitted that they had not received any correspondence before issuance of the SCN and had not been given chance to submit relevant facts, information, data and records in furtherance to their letter dated 23/10/2020. They have relied on the Hon'ble High Court of Gujarat decision on 23.07.2021 in the case of R/SCA No. 8255 of 2019 involving DHARAMSHIL AGENCIES Versus UNION OF INDIA.

They have submitted that the instant demand of service tax in the SCN being merely based on 26AS and presuming the same to be as a taxable service was not sustainable. They condemn such haphazard approach of the department and state that department cannot raise the demand on the basis of 26AS figures and balance sheet figures without examining the real nature of income and without establishing that the entire amount received by the appellant as reflected in said Form 26AS was consideration for any taxable services provided and without examining the services provided by the assessee and whether the said income was because of any exemption. It was not legal to presume that the entire amount was on account of consideration for providing taxable services without such examination. *They have relied on decision of Hon. Tribunal in case of Kush Constructions v. CGST NACIN, ZTI, Kanpur [2019 (24) GSTL 606 (Tri.A/1.)].* They have submitted that difference in figures reflected in ST-3 returns and Form 26AS filed under Income-tax Act, 1961 cannot be a basis for raising Service Tax demand without examining the reasons for such difference and examining whether the amount as reflected in said Income Tax return was the consideration for providing any taxable services or the difference was due to any exemption or abatement. They have also relied *on decision of Hon. Tribunal in case of Sharma Fabricators & Erectors Pvt. Ltd. [2017 (5) GSTL 96 (Tri. –All).* They have submitted that their records clearly show that the service provided by them were by way of clearing and forwarding agent and Goods Transport agency Service/transport of goods by road and proposing demand of service tax by making presumption contrary to facts was not legal or proper and they have prayed to drop the proceedings. The said order was also maintained by Hon. High Court and reported as [Commissioner v. Sharma Fabricators & Erectors Pvt. Ltd. - 2019 (22) GSTL]166 (All.)]. They have submitted that they had not received letters dated

13/02/2018,30/09/2019 & 06/07/2020 as mentioned in paragraph 4 to the SCN. They submitted that receipt of the SCN was instantaneous without granting mandatory pre-SCN consultation. They have further submitted that they were into business of freight forwarding for export cargo i.e. they carried out work related to planning and coordinating of the movement of commodities across international borders for goods exported from India, as freight forwarders act as a principal for providing the service of transportation of goods, where the destination was outside India. They have negotiated the terms of freight with the airline/carrier/ocean liner as well as the actual rate with the exporter, the invoice was raised by them to the exporter. In such cases, they have undertaken all legal responsibility for the transportation of the goods and provide the service of transportation of goods from a place in India to a place outside India. In such cases, they were not covered under the category of intermediary, which by definition excludes a person who provides a service on their account. It therefore follows that a freight forwarder, when acting as a principal, will not be liable to pay service tax when the destination of the goods is from a place in India to a place outside India." *On ocean freight, service tax was not applicable as per para 2 of circular No.197/7/2016-S.T. dated 12-08-2016 issued from F.No.137/54/2016- service Tax-Part-I.*

They have submitted the yearwise differential amount of Ocean Freight Sales

Financial Year	Total Sales as per ITR	Ocean Freight Sales	Sales other than Ocean Freight
2014-15	5,87,98,939/-	5,24,14,938/-	6384001/-
2015-16	5,24,52,663/-	4,46,32,333/-	78,20,330/-
2016-17	8,14,49,870/-	6,67,70,611/-	1 46,79,259/-
2017-18(upto June,2017	2,18,62,097/-	1,78,46,049/-	40,16,048/-

They have submitted that in light of above circular, they were not required to collect the service tax on Ocean freight from the party and hence the value of ocean freight can-not be taken into taxable

value of the service tax.

They have submitted that SCN was issued without any due diligence about the taxability and in arbitrary manner as extended period was invoked without invoking any evidence of suppression of facts, without any inquiry proceedings and without recording any statement in this regard. Difference in receipt as per IT records and/or non application of service tax number does not tantamount to any fraud, collusion or willful misstatement on their part. The relevant notification/ordinance was provided for completion of pending proceedings or filing of appeals, whereas in the instant case sending letters or issuance of notice after the issuance of said ordinance, cannot be termed as pending proceedings, as these were entirely new proceedings and it was beyond the scope of subject ordinance. They have submitted to drop the subject proceeding.

14. PERSONAL HEARING:

Personal Hearing in the subject issue was held on 15.11.2021. Shri M. K. Kothari Consultant appeared for personal hearing. They tendered a written submission dated 15.11.2021, in addition to the written submission rendered earlier. They requested to decide the notice on merit and consonance with the current legal position.

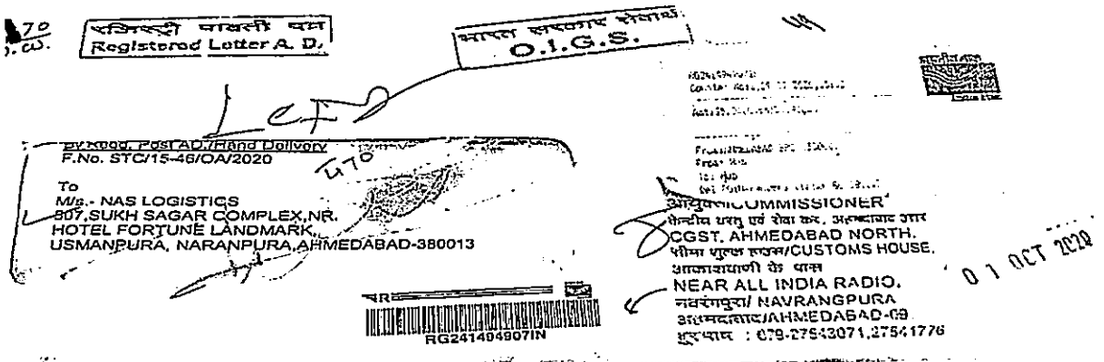
15. DISCUSSION AND FINDINGS:

15.1 I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence reply dated 23.10.2020, 08.10.2021 and 15.11.2021, and the documents submitted by the assessee.

15.2 On going through the SCN, I find that basically the essence of the case is that data of Sales/Gross receipt from services were shared by the CBDT with CBIC for F.Y. 2014-15, 2015-16 & 2016-17, which was then compared with the gross value declared in ST-3 Returns filed by the assessee for FY 2014-15, 2015-16 & 2016-17. The difference in value of service to the

extent of Rs. 5,24,14,938/- for F.Y.2014-15, Rs.4,46,32,333/- for F.Y.2015-16 and Rs.6,67,70,611/- for F.Y.2016-17 was noticed and therefore, the subject SCN for recovery of Service Tax of Rs. 2,29,65,766/- was issued. Apart from the aforementioned difference noticed, no other concrete documentary tangible evidence was adduced by the department to substantiate the allegations. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax on the differential value of Rs. 16,38,17,882/- under proviso to section 73(1) of Finance Act, 1944 or not.

15.3 I find assessee in their written submission dated 08.10.2021 have stated that they had not received any correspondence before issuance of the instant notice and had not been given chance to submit the facts of the case. I do not find any merit in the argument submitted by the assessee, as in para 4 of the SCN it is clearly mentioned that letters dated 13.02.2018, 30.09.2019 & 06.07.2020 were issued to the assessee. Further, they have relied upon the Hon'ble High Court of Gujarat order passed in SCA No.8255 of 2019 filed by M/s Dharamshil Agencies Vs. UOI, wherein argument submitted by the assessee was that he had not been given chance to submit the facts, which was acceptable. However, in the current proceedings the assessee was given sufficient time to submit the required details/information before issuance of SCN, but the assessee had not responded to any of the letters issued to them. Further, I find that SCN issued to the assessee and send through post was reverted back by the postal authority with remarks "Left". It proves that assessee had left the address available with the department and they had not made any change in their registration intimating the department that they had changed address . Hence, department was left with no option but to go by the available facts on the records and issue the subject SCN.



15.4 I also find that the assessee had relied upon the decision of Hon'ble *Tribunal in case of Kush Constructions v. CGST NACIN, ZTI, Kanpur [2019 (24) GSTL 606 (Tri.All)]*, that difference in figures reflected in ST-3 returns and Form 26AS filed under Income-tax Act, 1961 cannot be a basis for raising Service Tax demand without examining the reasons for such difference and examining whether the amount as reflected in said Income Tax return was the consideration for providing any taxable services or the difference was due to any exemption or abatement. They *have also relied on decision of Hon. Tribunal in case of Sharma Fabricators & Erectors Pvt. Ltd. [2017 (5) GSTL 96 (Tri.* –All), wherein it was held that the charges in the SCN have to be on the basis of books of accounts and records maintained by the assessee and other admissible evidences . The above citation are not applicable in the present case, as the assessee were requested repeatedly to provide the documents by various correspondence, but they had not submitted any records/documents to the department, hence, the department was left with was no alternative but to issue subject SCN without verifying relevant documents/records.

In support of the subject SCN , I rely upon the judgment in the case involving Aircel Digilink India Ltd. v/s Commissioner of Central Excise, Jaipur, reported in 2006 (3) STR 386 (Tri.-Del) and the case involving Bharti Cellular Ltd. v/s Commissioner of Central Excise, Delhi, reported in 2006 (3) S.T.R. 423 (Tri.-Del). In both cases, the Hon. Tribunal upheld invocation of extended period after taking note of the fact that appellants had not disclosed certain details and mode of computation in their ST-3 details and that there was nothing on record to suggest that appellants had ever approached the office of the Service Tax authorities to ascertain the details of their liability to pay the service tax. Similarly, in case of Insurance & Provident Fund Department v/s. Commissioner of Central Excise, Jaipur-I, 2006 (2) S.T.R. 369 (Tri.-Del.), Hon. Tribunal had held that non-disclosure of full amount of

premium collected would attract invocation of extended period. The ratio of the above judgments can be applied to the present case also as the assessee had not only suppressed the material facts from the department but had also failed to comply with law and procedures, including payment of service tax.

15.5 I find that the assessee in their reply dated 15.11.2021 have submitted that they were engaged in providing Clearing & Forwarding Agent Service. During the course of freight forwarders task, they have to act as principal for transportation of export cargo to a destination outside India. The goods were transported by sea/ air from a place in India to a destination outside India and such service was not a taxable service. They have submitted that in terms of Rule 10 of the Place of Provision of Services Rules 2012,the place of provision of the service of transportation of goods by air/sea, other than by mail or courier, was the destination of the goods. The place of provision of the service of transportation of goods by air/sea from a place in India to a place outside India, will be a place outside the taxable territory and hence the same was not liable to service tax. I hereby reproduce Rule 10 of the Place of Provision of Services Rules, 2012, which reads as under;

> *10. Place of provision of goods transportation services.-*
>
> *The place of provision of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of the goods: Provided that the place of provision of services of goods transportation agency shall be the location of the person liable to pay tax.*

In para 2.2 and 3.0 CBEC vide Circular No.197/7/2016-Service Tax dated 12.08.2016 issued from F.No.137/54/2016-Service Tax-part-I has clarified that freight forwarders are not covered under the category of intermediary, which by definition excludes a person who provides a service on his account and freight forwarder when acting as a principal , will not be liable to pay service tax when the destination of the goods is from a place in India to a place outside India, as under:

> 2.2 The freight forwarders may also act as a principal who is providing the service of transportation of goods, where the destination is outside India. In such cases the freight forwarders are negotiating the terms of freight with the airline/carrier/ocean liner as well as the actual rate with the exporter. The invoice is raised by the freight forwarder on the exporter. In such cases where the freight forwarder is undertaking all the legal responsibility for the transportation of the goods and undertakes all the attendant risks, he is providing the service of transportation of goods, from a place in India to a place outside India. He is bearing all the risks and liability for transportation. In such cases they are not covered under the category

> of intermediary, which by definition excludes a person who provides a service on his account.
>
> 3.0 It follows therefore that a freight forwarder, when acting as a principal, will not be liable to pay service tax when the destination of the goods is from a place in India to a place outside India.

The assessee accordingly used to bill their clients where the taxable and non-taxable charges were shown separately in their invoices. They have submitted the sample invoice copies of Invoice NO.NAS/NL/712/2014-15 dated 04.11.2014, AHM0000015808 dated 03.11.2014, NAS/KTPL/235/2014-15 dated 24.03.2015 and AHM0000018009 dated 23.04.2015. I find that sample invoices shows the amount of taxable as well as non taxable amount. I am therefore in agreement with the assessee's argument that they were providing taxable service as well as non-taxable services.

15.6 I find that the assessee has submitted Balance Sheet, Profit & Loss account and they have reflected their income in sales accounts under the head of SALES (S. TAX) and SALES (W/o S. Tax.), the assessee have submitted their Trail Balance, Balance Sheet and Profit & Loss account for the year of 2014-15, 201516, 2016-17 & 2017-18 (upto June,2017).

15.7 I find that the assessee has been audited by Shri Dhaval Thakkar & Associates, Chartered Accountants, M.No.142142 (Firm Reg No.0132841W) and they have issued audit report dated 04.09.2015 for F.Y. 2014-15, audit report dated 05.09.2016 for F.Y. 2015-16 and audit report dated 24.10.2017 for F.Y. 2016-17 under Section 44AB of the Income Tax Act, 1961. On verification of the same, it is discerned that the assessee had income of Rs. 5,87,98,938.96 [(Rs.6384001.35 (S. Tax)+Rs.52414937.61 (Without S. Tax)] for F.Y. 2014-15, Rs. 5,24,52,663.30 [(Rs.7820329.39 (S. Tax)+Rs.44632332.91 (Without S. Tax)] for F.Y.2015-16 and 8,14,49,869.70 [(Rs.14679258.66 (S. Tax)+Rs.66770611.04 (Without S. Tax)] for F.Y.2016-17, the same amount has been reflected in the data provided by the CBDT. It is established that amount of Sales/Gross Receipts from Services (Value of ITR) shown in SCN is found to be tallying with the Profit & Loss Account for the FY 2014-2015,2015-16 and

2016.17. From the ST3 filed by the assessee, it is noticed that the assessee has paid the Service Tax of Rs. 7,89,064/-(including cess) on taxable value of Rs. 63,84,001/- for F.Y.2014-15, Rs. 10,87,592/- (including cess) on taxable value of Rs. 78,20,330/- for F.Y.2015-16 and Rs.21,92,677/-(including cess) on taxable value of Rs.1,46,79,259/- for F.Y.2016-17 under the category of Clearing and Forwarding agent service.

15.8 I find that the assessee had taxable and non-taxable income for the F.Y.2014-15, 2015-16 & 2016-17, they have paid the Service Tax on the taxable income, the details of the same areas under:-

Sr.No.	Financial Year	Non-Taxable Income	Taxable Income
1	2014-15	52414937.61	6384001.35
2	2015-16	44632332.91	7820329.33
3	2016-17	66770611.04	14679258.66

I find that as discussed in para15.7 above, assessee had paid the service tax on taxable value for the F.Y.2014-15, 2015-16 & 2016-17 and file the ST3 returns for the relevant period, hence, there is no short payment of Service Tax by the assessee. Further, data provided by the Income Tax department is for taxable as well as non-taxable income, which has been shown as sales value in the Income Tax return for F.Y.2014-15, 2015-16, 2016-17, therefore, it has resulted in the difference of value declared in ST3 returns and ITR. The assessee has filed the income tax returns for the taxable and non-taxable income earned by him; however, non-taxable amount has not been shown in the ST3 returns.

16 The assessee has submitted the Tax Audit Report for the F.Y.2014-15, 2015-16 and 2016-17 issued by Shri Dhaval Thakkar & Associates, Chartered Accountants, Ahmedabad under Section 44AB of the Income Tax Act,1961. Section 44AB of Income Tax, Act,1961 is reproduced below:

Section - 44AB, Income-tax Act, 1961-2021

Audit of accounts of certain persons carrying on business or profession.

44AB. [6]Every person,—

(*a*) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year [7][***]:

[8][**Provided** that in the case of a person whose—

(*a*) aggregate of all amounts received including amount received for sales, turnover or gross receipts during the previous year, in cash, does not exceed five per cent of the said amount; and

(*b*) aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed five per cent of the said payment:

[9][**Provided further** *that for the purposes of this clause, the payment or receipt, as the case may be, by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the payment or receipt, as the case may be, in cash,*]

this clause shall have effect as if for the words "one crore rupees", the words "[10][*ten*] crore rupees" had been substituted; or]

(*b*) carrying on profession shall, if his gross receipts in profession exceed fifty lakh rupees in any previous year; or

(*c*) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB, as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year; or

(*d*) carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under section 44ADA and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year; or

(*e*) carrying on the business shall, if the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year,

get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed :

I find that in Form No.3CD issued by the auditor (Dhaval Thakkar & associates), in para 4 of the said form it has been established that the assessee are liable to pay Service Tax and they are holding Service Tax registration No.AUKPP3900EST001, para 11 the said audit report states that Cash Book, Bank Book, Income Register, Journal Register, Ledger have been examined, to the best of their information and knowledge, that the said accounts, read with notes thereon financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as may be prescribed. I find that the assessee has submitted the copy of Audit Report under Section 44AB of the Income Tax Act,1961 for F.Y.2014-15,2015-16 and 2016-17 alongwith Profit & Loss Accounts including all Annexure.

I find that the aforementioned records/ returns are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by assessee during a financial year. The said financial records are placed before different legal authorities for depicting true and fair financial picture. Assessee is legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in an unorganized manner and the statute provides mechanism for supervision and monitoring of financial records. It is mandated upon auditor to have access to all the bills, vouchers, books and accounts and statements of a company and also to call additional information required for verification and to arrive at fair conclusion in respect of the balance sheet and profit and loss accounts. It is also an onus cast upon the auditor to verify and make a report on balance sheet and profit and loss accounts that such accounts are in the manner as provided by statute and give a true and fair view on the affairs of the company. Therefore, I have no option other than to accept the information of nature of business/source of income to be true and fair.

17. Having considered these factual and documentary evidences available on records, I find no reason to disregard the assessee's arguments that they are providing taxable services as well as non-taxable services. I am therefore of the view that the assessee has established their case quite clearly that the difference in value of service is on account of sale of taxable services as well as non-taxable services. I therefore hold that no service tax is payable by the assessee as demanded in the subject SCN.

18. In view of the facts and circumstances pertaining to the case as aforementioned, the demand is not tenable in law, accordingly I do not consider it necessary to delve in the merits of invoking extended period of limitation which has been discussed in the SCN at length and contested by the said assessee in their submissions. For the same reasons, I am also not entering into discussions on imposing penalty and interest. Therefore, from the

factual matrix and the question of law as discussed in the foregoing paras, I pass the following order: -

ORDER

I drop the proceedings initiated against M/s. Nas Logistics, 507, Sukh Sagar Complex, Nr. Hotel Fortune Landmark, Usmanpura, Ahmedabad-380013, vide Show Cause Notice F. No. STC/15-46/OA/2020 dated 25.09.2020.

(Upendra Singh Yadav)
Commissioner,
Central Excise & CGST,
Ahmedabad North.

Date: 25 .11.2021.

By Regd. Post AD./Hand Delivery
F.No.STC/15-46/OA/2020.
To
M/s. Nas Logistics,
507, Sukh Sagar Complex,
Nr. Hotel Fortune Landmark,
Usmanpura,Ahmedabad-380013.

Copy to:

1. The Chief Commissioner of CGST & C. Ex., Ahmedabad Zone.
2. The Assistant Commissioner, CGST & C.Ex., Division-VII, Ahmedabad North.
3. The Superintendent, Range-V, Division-VII, Ahmedabad North.
4. The Superintendent (System), CGST, Ahmedabad North for uploading on the website.
5. Guard File