


system

आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हाउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009		Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1 <sup>st</sup> Floor) Navrangpura, Ahmedabad-380009
फ़ोन नंबर./ PHONE No.: 079-2754 4599	फैक्स/ FAX : 079-2754 4463	E-mail:- <a href="mailto:oaahmedabad2@gmail.com">oaahmedabad2@gmail.com</a>

**निबन्धित पावती डाक द्वारा / By REGISTERED POST AD**

फा .सं/. STC/15-29/OA/2020

DIN-20220364WT0000888B7D

आदेश की तारीख / Date of Order :30.03.2022  
जारी करने की तारीख / Date of Issue : 31.03.2022

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV  
आयुक्त / COMMISSIONER

**ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 74 /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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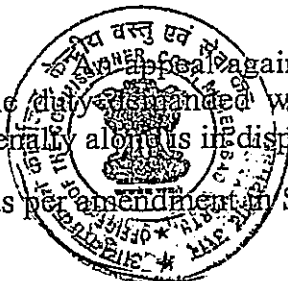
2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण , द्वितीय तल, बाहुमली भवन असरवा, गिरधर 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 दंड या विवादग्रस्त दंड शामिल है ।

2.1 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)



3. उक्त अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो ,उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ )उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए। अपील से संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अग्रेषित किए जाने चाहिए।

The Appeal should be filed in Form No. E.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं चार प्रतियों में दाखिल , उसकी भी उतनी ही ,की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उनमें से कम से कम) प्रतियाँ संलग्न की जाएंगीम एक प्रमाणित प्रति होगी।

(The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. अधिनियम की धारा 35बी के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

The prescribed fee under the provisions of Section 35 B of the Act shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. न्यायालय शुल्क अधिनियम 1970 ,की अनुसूची ,1-मद 6 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर 1.00रूपया का न्यायालय शुल्क टिकट लगा होना चाहिए।

The copy of this order attached therein should bear a court fee stamp of Re. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

8. अपील पर भी रु 4.00 .का न्यायालय शुल्क टिकट लगा होना चाहिए।

Appeal should also bear a court fee stamp of Rs. 4.00.

विषय: -कारण बताओ सूचना:

Subject Proceedings initiated vide Show Cause Notice No. DGGI/AZU/36-33/2020-21 dated 31.08.2020 issued to M/s. Chartered Logistic Ltd., C-1, Jay Tower, Ankur Commercial Centre, Naranpura, Ahmedabad-380013.



**ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 74 / 2021-22**

M/s. Chartered Logistics Ltd., C-1, Jay Tower, Ankur Commercial Centre, Naranpura, Ahmedabad-380013 were issued SCN No. DGGI/AZU/36-33/2020-21 dated 31.08.2020 by the Additional Director General, DGGI, AZU, Ahmedabad.

**BRIEF FACTS OF THE CASE PERTAINING TO THE SCN ISSUED TO M/S CHARTERED LOGISTICS LTD ARE AS FOLLOWS:**

1. M/s. Chartered Logistics Ltd., C-1, Jay Tower, Ankur Commercial Centre, Naranpura, Ahmedabad-380013 [here-in-after referred to as "M/s. CLL" or CLL for the sake of brevity] were holding Centralized Service Tax Registration No. AAACC7939HST001 under the category of "Transport of Goods by Road/Goods Transport Agency Service", "Clearing and forwarding Agent Service", "Transport of Goods by Air", "Transport of goods by Rail including transport of goods in containers by Rail", "Transport of Goods by Coastal shipping", "Other Taxable Services-other than the 119 listed" and "Supply of Tangible Goods Services",
2. An intelligence was gathered by the officers of Directorate General of GST Intelligence, Zonal Unit, Ahmedabad ["DGGI" for the sake of brevity] that M /s. CLL had provided taxable services in relation to 'managing distribution and logistics' and 'operational or administrative assistance' in the business to M/s. Reliance Supply Chain Solutions Limited (in short "M/s RSCPL) & M/s. Fine Tech Corporation Pvt. Ltd.(in short "M/s. FCPL" or FCPL) from their various Branch Offices situated all over India. For which, they had operated and maintained the Reliance owned reefer /ambient refrigerated vehicles and had also supplied containerized vehicles on dedicated basis along with drivers and transport supervisors on 24 hours per day basis to manage the fleet of said vehicles and for safe transportation of goods. The services provided by them included services like safe transportation of goods, upkeep of the said vehicles, to check on route pilferages, maintain consistency, also provide drivers/ supervisors on 24 hours'/day basis and arrange diesel for the said vehicles. M/s CLL had reportedly charged service charges on fixed lump sum basis per month per vehicle and variable cost at agreed rate for their own vehicles which appeared to be the consideration received against supply of tangible goods for use which was taxable. M/s CLL had not issued any consignment note/L.R. in regard to such services for transportation of any of the consignments. M/s. CLL was not paying service tax on the aforesaid mentioned service activity.
3. Therefore, an inquiry against M/s. CLL was initiated by the DGGI Officers, The summons dated 06.07.2018, 25.09.2018, 19.11.2018, 04.03.2020, 18.03.2020, 03.06.2020 under Section 14 of Central Excise, 1944 read with Section 83 of Finance Act, 1994 read with section 174 of CGST Act 2017 were issued to M/s. CLL. The letters dated 29.11.2019, 31.12.2019, 11.06.2020 (RUD-1) were also issued to M/s CLL, to tender document mentioned thereon and to record their oral statements. Subsequently, summons dated 07.01.2020, 28.01.2020, 13.02.2020 were issued to M/s FCPL & M/s

RSCPL calling for certain documents mentioned thereon related to their business transactions with M /s CLL.

**4, SUBMISSION OF DOCUMENTS/RECORDS BY M/S CHARTERED LOGISTICS LIMITED:**

In reply, M/s. CLL submitted some documents viz. Audited Balance Sheet/Profit and Loss Account, Copy of Work Order with principal transporter M/s. FCPL, copies of sample invoices raised in respect of the impugned services, sales ledger accounts for the aforesaid period. Further, vide letter dated 20. 12.2018, M/s CLL also submitted that they were not associated with M/s RSCPL for any work. Therefore, the investigation had not examined the issue of services rendered/received by M/s CLL/ M/s RSCPL.

Furthermore, vide letter dated 25.02.2020 and email dated 15.06.2020, M/s FCPL, Mumbai submitted copies of the contract dated 25.10.2012 alongwith renewal letter dated 25.10.2014 and agreement dated 25.10.2012 entered into by them with M/s. CLL, Ahmedabad which reveal the exact nature and scope of service received by them from M/s CLL along with copies of ledger account etc.

**SCRUTINY OF THE DOCUMENTS SUBMITTED BY M/S CHARTERED LOGISTICS LTD AND M/S FCPL: -**

**5. THE AGREEMENT DATED 25.10.2012 (ALONGWITH RENEWAL LETTER DATED 25.10.2014) & 25.10.2016 WERE EXECUTED BETWEEN M/s. CHARTERED LOGISTICS LTD AND M/s. FINE TECH CORPORATION PVT. LTD.**

5.1 The said agreements were purportedly for transportation service using ambient and refrigerated vehicles deployed by M/s. CLL at various locations for M/s. FCPL. Some of the features of the said agreements were as under:

**RECITAL**

(A) **FCPL is in the business of transportation of Goods by Road**, including Food, FMCG, F&V, clothing and various general merchandise to the network of its client business locations. FCPL collects Goods from a number of distribution centres / suppliers and arranges its transportation to its client locations.

(B) **TRUCK OPERATOR is in business of fleet operation** and has experience in the Transportation business and, pursuant to the Services Agreement, has agreed to provide transportation services of ambient & refrigerated vehicles to FCPL for transporting goods to its client locations.

Now therefore it is hereby agreed as follows:



**I. Scope of Services:**

1. To provide transportation services using ambient and refrigerated vehicles as per Annexure 1 at FCPL DC/CPC locations for secondary (DC to Stores)/Local primary (Inter DC, CC to CPC)/ Regional transportation services.
2. For providing transportation services by you, FCPL shall from time to time instruct the Truck operator to increase/decrease the number of vehicle as per requirement of the DC.
3. To provide adequate supervision for smooth operations and to achieve service levels as defined later in KPI by FCPL.
4. To unload the trucks at Stores/other locations belonging to FCPL or its clients and arranging to put them the same in BOH/area as per FCPL instructions.

**II. Contract Duration:**

This agreement will take effect from the commencement date and subject to clause XVI will remain in force to a period of two-year subject to renewal every year on mutual understanding and subject to satisfactory performance.

**III. Rate & Terms:**

1. That in consideration of FCPL paying to the TRUCK OPERATOR at the rates mentioned in Annexure 2 in this contract, TRUCK OPERATOR hereby agrees to transport the goods from FCPL's or its clients' sites to various locations mentioned in Annexure 1 or any other locations as specified by FCPL from time to time and bring return loads if required.

2. The transportation charges agreed would be applicable for a minimum period of one year from date of signing of Contract and will remain fixed with exception of escalation/de-escalation due to change in the fuel prices as per formula given under point 11 of this clause.

3. The transportation rates are inclusive of all cost of the truck operator i.e. direct, indirect and incidental to transportation & operation of business including way side expenses but excluding Toll charges (where agreed separately) & service tax if applicable.

4. Toll, charges during transportation, if applicable, shall be paid extra at actuals against submission of toll receipts/ monthly toll passes, wherever agreed separately and as stated I Annexure 2. As far as Possible, transport operator should try to make smart use of toll passes and optimize cost as if running own operations.

5. Unloading charges during transportation, if applicable shall be paid as per agreed rates.
6. **Applicable transportation charges for a vehicle for a month shall be derived as per total running during the month i.e. Fixed Cost+ Total Variable Cost+ unloading charges if applicable -Deductions & Penalty applicable due to non-compliance (like transit delay, Shortage/damages\_ in Transit & Nonavailability/ Non-reporting, in-transit temperature losses beyond specified limit in case of Reefer operation).**
7. Variable cost will be paid on total Km running during the month, based on the standard distances as agreed between FCPL and transporter.
8. In case of Reefer vehicles, the variable reefer running rate will be paid only for the reefer leg of the movement.
9. **The payments shall be made based on the number of vehicles engaged by the Truck operator for providing transportation services.**
10. All vehicles must be always in fit conditions for FCPL operations.

XXX

#### IV. Billing & Payments;

1. The accounting period for transportation charges will be from 25h to 24th of every month or as prescribed by FCPL from time to time.
2. Bill should be in standard format as specified in Annexure 3 with supporting documents (Trip numbers) and original receipt for the payment of expenses which shall be paid on actual.
3. The transportation bill should be complete in all respects duly signed by authorized signatory of the TRUCK OPERATOR.
4. TRUCK OPERATOR shall raise transportation bill on monthly basis as per above payment cycle and submit on or before 1st of following month or as per any date as mutually agreed in standard format along with back up data as per FCPL.

Transportation bills to be submitted to the respective Distribution Centre Transport-in-charge for payment.



6. FCPL will pay within 30 days of receipt of commercially correct bill duly certified by FCPL Transport Manager.

7. Payment will be subject to TDS, applicable taxes and all other sums payable by TRUCK OPERATOR to FCPL, if any.

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9. Check list for Transportation Bill;

a. **Transportation bill must contain following details as per Annexure 3**

- i. Printed serial number
- ii. Name, address of TRUCK OPERATOR
- iii. Name and address of FCPL
- iv. Description, classification and value of service
- v. **Vehicle wise Attendance**
- vi. **Vehicle Wise-Trips/Km**

XXX

**V. Operation Rules**

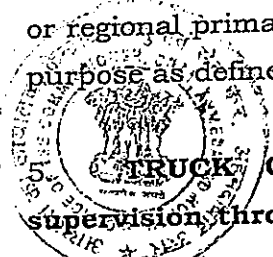
1. **Truck Operator shall strictly conform to the various instructions/SOP given from time to time by the authorities of FCPL, with regard to the safe and smooth transportation of materials as agreed to under this contract.**

2. It is agreed that all the trucks and manpower deployed by the TRUCK OPERATOR covered by the agreement shall operate at the sole risk of the TRUCK OPERATOR. In no case, FCPL would be held responsible for any loss or damage done to the truck or manpower while on the FCPL's work or parked in their premises of FCPL or FCPL's principals.

3. **TRUCK OPERATOR shall ensure availability of vehicles with complete supervision to manage the fleet for the purpose of providing transportation service.**

4. The vehicles will be used for secondary distribution (from DC to stores), pick up returns from stores, backhaul pick up from vendor locations and for local or regional primary movements from nearby sourcing locations or for any other purpose as defined by FCPL

**TRUCK OPERATOR needs to ensure availability of adequate supervision through dedicated team of Key Account Manager/Supervisors & Coordinators as agreed in contracted terms (Annexure 2) at DCs, to ensure**



smooth and efficient running of vehicles, on time availability & reporting of drivers and vehicles in line with discussion with FCPL.

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10. Truck Operator would be responsible for ensuring the availability of total number of vehicles with FCPL specifications on each day.

11. TRUCK OPERATOR shall provide alternate driver in the event of absenteeism of regular driver.

12. Besides the agreed count of vehicles, whenever required TRANSPORTER should arrange for extra vehicles from market as & when demanded by FCPL. The rates applicable to them would be agreed upfront and incorporated in the contract from time to time.

13. TRUCK OPERATOR shall be responsible for safe transportation & delivery of goods and for en-route pilferages. TRUCK OPERATOR to ensure all deliveries to be made with Proper acknowledgment as per FCPL guidelines.

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22. Must ensure driver follows the FCPL approved & specified route. Any deviation due to genuine reasons should be informed immediately to the transport manager before diversions. Truck following different route without information & approval would not be paid extra and any delay due to that would be penalized as transit delay.

23. TRUCK OPERATOR must ensure that all trips must have correct opening and closing Km on trip sheets.

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**33. Refrigerated Vehicle Management**

a. For movement in reefer/cold mode. TRUCK OPERATOR must ensure that reefer unit is switched-on and temperature set point is maintained throughout the trip when it is in loaded condition.

b. Must ensure that driver records the temperature at each stops on trip sheet and gets the acknowledgment for same from the respective location in -charge.





c. Must ensure that all the reefers are always in good working condition to avoid any loss of merchandise due to temperature failure.

**VII. Repair and Maintenance:**

1. Vehicles maintenance and appearance are critical to meeting our obligations. Vehicles must be available and in goods operating conditions all the time. Truck Operator needs to ensure the on-time maintenance of same.

2. Repair and Maintenance of the vehicle would solely be the responsibility of Truck Operator. Any vehicle breakdown, in transit needs to be handled by Truck Operator.

3. Operations would be continuous and would be more critical on weekend days, public holidays and festive seasons. All the maintenance should be planned only on lean days of week (Tuesday/ Wednesday) excluding Public Holidays.

4. Truck Operator shall arrange replacement of vehicles going out for scheduled maintenance or emergency repair.

**X. Insurance:**

Subject to the provisions of this Clause and the limitations contained in Clause XV, **Truck Operator will be responsible for and will indemnify FCPL against any claims costs or expenses arising through any loss or damage to property and /or Goods connected with provision of the Services**, that FCPL may incur as a result of any act or omission on the part of Truck Operator, or its employees or its agents or its servants.

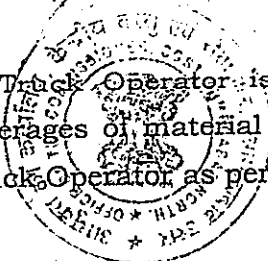
**FCPL insurance Responsibilities**

**FCPL at its discretion may undertake insurance cover of material in transit.** However liability and responsibility of any damage due to negligence of the driver/ Truck Operator in transit will be recovered from the Truck Operator.

**Truck Operator's Insurance Responsibilities**

1. Truck Operator must have valid insurance for his vehicle in accordance with the prevailing law including that for third party and comprehensive cover for the drivers/ cleaners.

2. Truck Operator is also wholly responsible for any shortage, damage or pilferages of material in transit. All shortage/damage shall be recovered from Truck Operator, as per clause IX.



3. Any damage due to factors beyond control of the Truck Operator shall be covered by the insurance policy. However, any losses up to Rs. 5000 shall not be claimed from the insurance company and will be recovered from the Truck Operator's bill.

9. All shortages in transit shall be recovered from Truck Operator.

**XI. Warranties**

**a. Truck Operator Warranties:**

Truck Operator hereby warrants to FCPL that:

- 1. Truck operator has and will continue to have throughout the continuation of the Agreement effectively trained and organised personnel necessary to perform the Services as herein provided and the ability to perform the Services as herein provided.
- 2. Truck operator will perform the Services in accordance with FCPL requirements.
- 3. Truck operator holds and will continue to hold throughout the continuation of the Agreement all necessary licences and authorities to perform the services as herein provided.
- 4. XXXX
- 5. XXXX
- 6. XXXX
- 7. It is providing the transportation of goods by road services as per the terms set out in this agreement and it is not delivering/ giving any transfer of right to use of vehicles to FCPL.

5.2 It appeared from the said agreements, the 'Activities' to be carried out by M/s CLL was spelt out and accordingly, it appeared that M/s CLL as truck operator:

Agreed to deploy 45 ambient and refrigerated vehicles to M/s FCPL, Chennai for transportation goods.

The vehicles were of different capacity and make i.e Roadstar, S.M. Sartaz, Super, Tata ace/equivalent, Tata 407/equivalent, Tata 709/equivalent, Tata 909/equivalent, Tata 1109 /equivalent, Tata 1613/equivalent and mobilized for



M/s FCPL who were in the business of transportation of goods by road, including food, FMCG, F&V, clothing and various general merchandise to the network of business locations of various clients of M/s FCPL. As per agreement, M/s FCPL had paid consideration to them on the rate and terms and as per the billing process specified in clauses III and IV of the agreement at the rates specified in Annexure-2 to the agreement of the said contract dated 25.10.2012 and 25.10.2016. The details regarding vehicle model, vehicle type, minimum payload required, number of trucks were detailed in Annexure-1 of the agreement as under:

## ANNEXURE 1.

**LIST OF VEHICLES TO BE PROVIDED BY TRUCK OPERATOR**

Veh. Type	Vehicle Type	Min. Payload Required	Number of Trucks
Roadstar/ Equivalent	Reefer	800 Kgs	
S.M. Sartaz	Reefer	2.5 MT	6
S.M. Super	Reefer	4 MT	20
Tata ace/equivalent	Ambient	800 Kgs	1
Tata 407/ equivalent	Ambient	3.5 Mt	
Tata 709/ equivalent	Ambient	4	7
Tata 909/ equivalent	Ambient	5.5 MT	6
Tata 1109/ equivalent	Ambient	7.5 MT	3
Tata 1613/ equivalent	Ambient	9 MT	2
Total trucks			45

(iii) M/s FCPL had agreed to pay transportation /freight charges against the services provided by M/s CLL by using ambient/reefer vehicles as per rates mentioned in Annexure 2 to the agreement, as detailed below. It was revealed that M/s FCPL had also agreed to pay unloading charges during transportation, if applicable as per agreed rates and toll charges on actual basis.

**ANNEXURE-2 OF AGREEMENT DATED 25.10.2016**

Truck Type	Vehicle Type	Capacity In Tons	Mileage Reefer	Mileage Ambient	Fixed Cost Rs. Per month	Variable Cost Rs. Per km Reefer	Variable Cost Rs. Per km Ambient	Toll Charges	Maintenance	Remarks
Roadstar/ Equivalent	Reefer	800 Kgs	10	12	15000	7.76	6.96	At Actual against bills	To be reimbursed at actuals	
S.M. Sartaz	Reefer	2.5 MT	6.25	7.5	15000	11.16	9.74	At Actual against bills	To be reimbursed at actuals	
S.M. Super	Reefer	4 MT	5.5	7	15000	12.32	10.24	At Actual against bills	To be reimbursed at actuals	
Tata ace/equivalent	Ambient	800 Kgs		12	18000		7.52	At Actual against bills	Included in variable	
Tata 407/ equivalent	Ambient	3.5 MT		8	22876		11.8	At Actual against bills	Included in variable	
Tata 709/ equivalent	Ambient			7	24752		12.96	At Actual against bills	Included in variable	

Tata 909/ equivalent	Ambient	5.5 MT		7	27082		14.13	At Actual against bills	Included in variable	
Tata 1109/ equivalent	Ambient	7.5 MT		6			19.7	At Actual against bills	Included in variable	
Tata 1613/ equivalent	Ambient	9 MT		5.5			22.51	At Actual against bills	Included in variable	

**5.3** It appeared that the CLL had originally entered into an agreement on 25.10.2012 for supply/deployment of 45 ambient vehicles with M/S. FINE TECH CORPORATION PVT. LTD. Further, scrutiny of documents and an analysis of the 'activities' carried out by the CLL as specified in the agreement, revealed that they were engaged in providing taxable service of fleet operations against consideration specified in Annexure-2.

**6. "GENERAL TERMS AND CONDITIONS" IN TERMS OF WHICH AGREEMENT DATED 25.10.2012 HAS BEEN ENTERED INTO BETWEEN CLL AND FCPL AS ENCLOSED WITH THE WORK ORDER TRPT-SC/2015-16 DATED 01.04.2015 BETWEEN M/S. CHARTERED LOGISTIC LIMITED AND M/S. FINE TECH CORPORATION PVT LTD. (RUD-3)**

**Relevant Clauses General Terms and Conditions are as under:**

**1. Term.**

This agreement shall come into force and be effective from the effective date and shall be valid during the term, unless terminated earlier in accordance with the terms hereof.

**2. Provision of Services.**

2.1 The Road Truck Operator shall provide services to Company on non exclusive basis in accordance with the terms and conditions of this agreement, applicable laws, Applicable Permits, Operation Protocol and the Scope of Work.

2.2 Road Truck Operator shall at all times perform the Services conscientiously and diligently in a professional manner with all due care and diligence using suitably qualified, competent and skilled personnel and to the complete satisfaction of Company.

2.3 Road Truck Operator shall faithfully and diligently comply with and carry out all directions, orders, instructions and guidelines issued by Company from time to time in relation to this Agreement including but not limited to timelines for completion of Services("Operational Protocols")

2.4 Road Truck Operator shall obtain, keep valid and subsisting, and comply with the conditions of, all permits, licenses, authorizations and consents as may be required from time to time in respect of and in relation to the performance of its obligations hereunder("Applicable Permits")

2.5 XXXX



2.6 XXXXX

2.7 XXXX

2.8 XXXX

2.9 XXXX

**3. Payment Terms and Security Deposit**

3.1 Subject to provision of Services by the Road Truck Operator to the satisfaction of Company, Company shall pay to the Road Truck Operator amounts determined in accordance with the pricing mechanism set out in Schedule III hereto.

3.2 XXXX

3.3 XXXKK

3.4 XXXX

3.5 All payments made by company to Road Truck Operator hereunder shall be subject to deduction of tax at source as per the income tax regulations in force from time to time. A certificate of the tax deducted at source evidencing deduction of income tax from the payment made shall be issued by Company within the number of days of such payments as allowed under the Income Tax regulations. Company shall pay to the Road Truck Operator amount of service tax as per Applicable Laws on the amounts paid by Company to the Road Truck Operator pursuant to clause 3.1 above. Road Truck Operator shall promptly provide to company copy of challan as proof of payment of service tax to the concerned tax authority.

3.6 XXXX

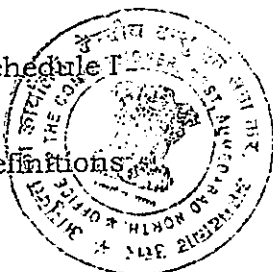
**8. Insurance**

8.1 Road Truck Operator shall obtain, and keep valid and subsisting, at its own expenses, in respect of Vehicles and Road Truck Operator's Personnel sufficient and proper insurance coverage against physical loss or injury to Road Truck Operator's Personnel including in respect of any accident, injury, loss of property and /or loss of life and any other insurance as necessary or required pursuant to Applicable Laws.

8.2 XXXX

Schedule I

Definitions



“Vehicles” means and includes tankers deployed by Road Truck Operator for provision of Services ....

## Schedule II

### Scope of Work

#### 1. Vehicles

##### 1.1 Road Truck Operator shall

- i, at its own cost and expense deploy adequate number of Vehicles for provision of Services as per terms of this Agreement
- ii. XXXX
- iii. XXXX
- iv. XXXX
- v. Ensure that Vehicles are at all times available to perform multi pick up/deliveries as and when required and advised by Company through its authorised representatives,
- vi. Ensure that each Vehicle have adequate drivers allocated to the Vehicles for 24 hours operation
- vii. XXXX
- viii. XXXX
- ix. XXXX
- xi. XXXX

#### 2. Personnel

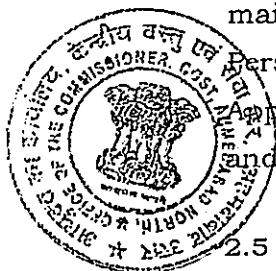
2.1 Road Truck Operator shall at its sole cost and expense deploy adequate personnel, sufficiently trained and qualified, fully competent, medically fit and equipped for providing services diligently and efficiently in accordance with the terms thereof. If company is of the opinion that additional personnel are required for effective and efficient provision of services, Road Truck Operator shall at its cost and expense employ such additional personnel as may be recommended by company

2.2 XXXX

2.3 XXXX

2.4 ....Road Truck Operator shall be solely responsible and liable for (i) payment of salaries, wages, compensation, and other dues of all such Personnel, (ii) maintenance of applicable statutory records and returns in connection with such Personnel and for their health, safety and service conditions in accordance with applicable Laws and Applicable Permits; and (iii) compliance with all applicable and employment laws.

2.5 XXXX



2.6 Road Truck Operator agrees to make available one(1) Personnel as its duly authorized representative at all time during the Term in relation to provision of Services hereunder. Such Road Truck Operator Representative shall be the one point of contact for the Company and to representative with respect of all Road Transport Operator and shall ensure uninterrupted services. Such Personnel should be authorized to sign delivery challan, verification of weighment of the vehicles and other documents related to Services, and the Representative's acknowledgment will be binding on the Road Truck Operator.

#### **EXAMINATION OF THE NATURE OF SERVICES PROVIDED BY CLL:**

7. Therefore, the issue involved appeared to be the classification of services, which was provided by the CLL to M/s FCPL. There appeared two competing classifications (i) service by way of transport of goods by road covered by the negative list vide section 66D(P)(i) of the Finance Act, 1994 as claimed by the CLL OR (ii) declared service of supply of tangible goods in terms of section 66E(f) of the Finance Act, 1994,

7.1 A combined reading of the agreements dated 25.10.2012/25.10.2016 and the General Terms and Conditions document revealed that:

CLL owned or possessed fleet of trucks, and were engaged in mobilizing/making available fully operational trucks along with drivers and supervisors to FCPL and carrying out, on behalf of FCPL services of transportation of goods by road.

7.2 At the time of introduction of levy of service tax on supply of tangible goods, service the Ministry of Finance vide letter D.O.F. No. 334/1/2008-TRU dated 29-2-2008 had clarified as under:

*"4.4.2 Excavators, wheel loaders, dump trucks, crawler carriers, compaction equipment, cranes, etc., offshore construction vessels & barges, geo-technical vessels, tug and barge flotillas, rigs and high value machineries are supplied for use, with no legal right of possession and effective control. Transaction of allowing another person to use the goods, without giving legal right of possession and effective control, not being treated as sale of goods, is treated as service,*

*4.4.3 Proposal is to levy service tax on such services provided in relation to supply of tangible goods, including machinery, equipment and appliances, for use, with no legal right of possession or effective control."*

7.3. On introduction of negative list regime w.e.f. 01.07.2012, this service was covered under section 66E(f) of the Finance Act, 1994 as "Declared Service", which reads as under:

**Section 66E. Declared services.** — The following shall constitute declared services, namely:—

(a) .....

(f) transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods.

7.4 The relevant terms and conditions and clauses of the agreements indicated that M/s CLL had entered into agreements with FCPL to mobilize and make available fully operational Reefer and Ambient trucks, manned by drivers and supervisor, on long term basis and by using these trucks, to provide services of transportation to FCPL (not to the consignors or consignees). The trucks so deployed by M/s CLL for provision of service to FCPL were manned by the drivers and supervisor made available by CLL under the same contract and the vehicles remained under possession and effective control of CLL. Thus, the services were provided without parting with the right of possession and effective control of such trucks.

7.5 It further appeared that the M/s CLL had placed their trucks at the disposal of the service recipients on time charter basis without parting with the right of possession and effective control. This fact was supported by para 7 of clause XI a. of the agreement dated 25.10.2012 which itself acknowledges as under:

*7. It is providing the transportation of goods by road services as per the terms set out in this agreement and it is not delivering/ giving any transfer of right to use of vehicles to FCPL.*

7.6 It clearly appeared from the agreement dated 25.10.2012 that the nature of activities and obligations undertaken by two parties to the contract viz FCPL described them being "in the business of transportation of goods by road" M/s CLL described as "Truck Operator" who were in the business of fleet





**7.7** The CLL had agreed to deploy ambient and refrigerated vehicles to FCPL for transporting goods on the instructions of FCPL. Thus, CLL was not providing the services of transportation of goods to its clients i.e. the consignor or consignee of the goods but was providing services of deployment of vehicles to FCPL for use on behalf and directions of FCPL. Obviously, CLL is not involved in transportation of goods by road on its own account, as contended, but was primarily a fleet operator who had first provided the vehicles to FCPL and then used the vehicles for transportation of goods by road to the clients of FCPL by conforming to the instructions and SOP given from time to time by FCPL. The relevant extract of the agreement is re-produced as under:

#### **RECITAL**

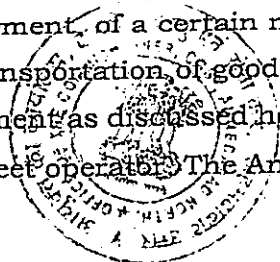
*(A) FCPL is in the business of transportation of Goods by Road, including Food, FMCG, F&V, clothing and various general merchandise to the network of its client business locations. FCPL collects Goods from a number of distribution centres/ suppliers and arranges its transportation to its client locations.*

*(B) TRUCK OPERATOR is in business of fleet operation and has experience in the Transportation business and, pursuant to the Services Agreement, has agreed to provide transportation services of ambient & refrigerated vehicles to FCPL for transporting goods to its client locations.*

#### **7.8 Scope of Work in terms of Schedule II of the General Terms and Conditions:**

**7.8.1 Deployment of vehicles:** It clearly specified the nature of contract between FCPL and CLL (Schedule II, Scope of Work para 1.1-i, accordingly, that Road Truck Operator was to, at its own cost and expense, deploy adequate number of Vehicles for provision of Services as per terms of this Agreement and ensure that Vehicles would at all times to be available to perform multi pick up/deliveries as and when required and advised by FCPL through its authorised representatives. Road Truck Operator was to ensure that each Vehicle have adequate drivers allocated to the Vehicles for 24 hours operation. In terms of the specific agreement dated 25.10.2012 also Scope of Work (schedule I) assigned to the truck operator M /s CLL was to provide transportation services using ambient and refrigerated vehicles deployed by it as per Annexure 1 at various locations of FCPL.

It appeared from the Annexure-1 that the essence of agreement was for deployment of a certain number of vehicles by CLL and such vehicles were to be used for transportation of goods on the directions and advise of and on behalf of FCPL, The agreement as discussed hereinabove also did not describe CLL as goods transporter but as a fleet operator. The Annexure 1 to the agreement dated 25.10.2012 reads as under:



## ANNEXURE-1

**LIST OF VEHICLES TO BE PROVIDED BY TRUCK OPERATOR**

Veh. Type	Vehicle Type	Min. Payload Required	Number of Trucks
Roadstar/ Equivalent	Reefer	800 Kgs	
S.M. Sartaz	Reefer	2.5 MT	6
S.M. Super	Reefer	4 MT	20
Tata ace/equivalent	Ambient	800 Kgs	1
Tata 407/ equivalent	Ambient	3.5 Mt	
Tata 709/ equivalent	Ambient	4	7
Tata 909/ equivalent	Ambient	5.5 MT	6
Tata 1109/ equivalent	Ambient	7.5 MT	3
Tata 1613/ equivalent	Ambient	9 MT	2
Total trucks			45

Further, these vehicles were to be used for transportation of goods by CLL strictly on directions and orders of FCPL and CLL were providing the service to FCPL. Para 2.3 of Clause 2 in respect of Provision of Service in the General Terms and Conditions clearly specified that Road Truck Operator should faithfully and diligently comply with and carry out all directions, orders, instructions and guidelines issued by Company from time to time in relation to this Agreement including but not limited to timelines for completion of Services ("Operational Protocols"). Similar provisions were specified in para 1 of clause V. "Operational Rules" of the contract dated 25.10.2012 between FCPL and CLL. The CLL did not even have the discretion to choose the route for movement of trucks. Para 22 of clause V. "Operational Rules" of the contract dated 25.10.2012 between FCPL and CLL prescribed that the Truck Operator (CLL) must ensure drivers follow the FCPL approved & specified route.

Thus, the activity of transportation of goods was actually undertaken by FCPL who were in the business of transportation of goods by road and this activity was being performed by CLL, not on own account to their own clients (consigner or consignee) but on behalf and directions of FCPL and the service was rendered to FCPL.

**7.8.2 DURATION OF THE CONTRACT**

The contract was valid for a period of two/three years subject to renewal every year on mutual understanding.

It was revealed from the agreement dated 25.10.2012 that the terms and rate for payment to CLL, in terms of para 6 of Clause III of the agreement dated 25.10.2012 as under:

*Applicable transportation charges for a vehicle for a month shall be derived as per total running during the month i.e. Fixed Cost+ Total Variable Cost+ unloading*



*charges if applicable —Deductions & Penalty applicable due to non-compliance (like transit delay, shortage/damages in Transit & Non-availability/ Non-reporting.*

Further, in terms of Para 9 of clause III of this agreement:

*9. The payments shall be made based on the number of vehicles engaged by the Truck operator for providing transportation services.*

Thus, the rate and terms for determination of amounts payable to CLL had two specific components (i) Fixed monthly charges of Rs 15000 to Rs 27082 per truck was to be paid to CLL in addition to (ii) variable cost of Rs 6.96 to Rs 22.51 per km depending upon the type of vehicle deployed viz. Reefer or ambient vehicle and its capacity (as per Annexure 1 and Annexure 2 of agreement dated 25.10.2012), which clearly indicated that the agreement was for supply of trucks along with drivers and operation of trucks on the instructions and directions of FCPL.

It appeared that the terms and rate for payment of consideration to CLL did not refer to determination of quantum of payment with reference to the nature, volume and weight of goods being transported by CLL while undertaking the fleet operation. Therefore, the claim made by CLL that they were doing transportation of goods by road appeared to be fallacious, hence untenable.

Therefore, the service provided by the CLL appeared not to be in the nature of transportation of goods by road but appeared to be squarely covered under the category of supply of various type of trucks which are tangible goods for use in transportation service.

### **7.8.3 Deployment of Personnel, Repair and Maintenance of vehicles, Insurance etc**

Further, CLL were also supposed to provide for the duration of agreement for each truck at its own cost and expense adequate personnel, including the drivers to operate the trucks and provide the services in accordance with the FCPL instructions. All such personnel remain the employees of CLL. (Schedule II, Scope of Work as detailed in the General Terms and Conditions document and Clause V, Operational Rules as described in the agreement dated 25.10.2012).

Scrutiny of the agreement dated 25.10.2012, revealed that replacement of vehicle was responsibility of CLL in case of scheduled maintenance or emergency repairs of the vehicle deployed (Clause VII of the Agreement), Similarly, as per clause X & XI of the said agreement, it was responsibility of CLL to have valid insurance covering the third party drivers/cleaners, valid licence to perform service and hold its validity throughout the contract period. The trucks made available by CLL were to remain available and fully operational during the term specified in the agreement (two/three years) for exclusive use of FCPL.

It appeared from the agreement and the terms and conditions in regard to "deployment of vehicles along with adequate personnel, repair and maintenance and Insurance of the vehicles" that FCPL was engaged in hiring of trucks for transportation of goods belonging to their clients for a consideration. However, the possession and effective control of the trucks appeared to have remained with CLL. Para 7 of Clause XI a of the agreement dated CLL acknowledged the same:

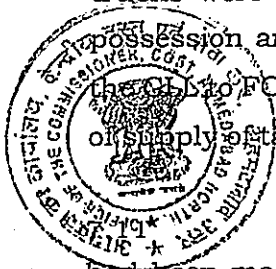
**7. It is providing the transportation of goods by road services as per the terms set out in this agreement and it is not delivering/ giving any transfer of right to use of vehicles to FCPL.**

Therefore, it was observed from the above that M/s. CLL had not rendered the service of transportation of goods by road to FCPL but deployed vehicles for permissive use by FCPL. Therefore, the services provided by M/s CLL to M/s FCPL appeared to be declared services of transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods under Section 66E (f) of the Finance Act, 1994 and liable for Service Tax. The Hon'ble High Court, in the case of Mahyco Monsanto Biotech (India) Pvt. Ltd. Vs UOI [2016(44)STR 161(Bom), has explained the case of "permissive use of good" in detailed and held that in case of permissive use of goods by transferee, the effective controls over goods remain with transferor. The said decision appeared applicable in the instant case.

7.9 From the analysis of above clauses in the agreement, it is amply clear that FCPL did not even have the rights for maintenance and repairs of the subject vehicles and the CLL was responsible for repair and maintenance of all the vehicles. Moreover, throughout the term of contract, the responsibility to insure the vehicles was also that of CLL not of FCPL. Therefore, the effective control over the vehicles remained with CLL. It was observed that the decision of the tribunal in the case Carzonrent (India) Pvt. Limited Vs Commissioner of Service Tax, Delhi-I [2017(50) STR 172 (tri.-Del)] was applicable.

7.10 Therefore, the service provided by the CLL appeared to have been squarely covered under the category of supply of tangible goods for use service. Section 66E(f) of the Finance Act, 1994 defines the declared service involving supply of tangible goods for use service as "**transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods**". There is no dispute that trucks were mobilized / deployed by CLL to FCPL without transferring the right of possession and effective control for use by FCPL. Therefore, the services rendered by the CLL to FCPL in respect of hiring of trucks appeared to be covered under the purview of supply of tangible goods for use as defined in Section 66E(f) of the Finance Act, 1994.

It was observed that in the agreement(s) between CLL and FCPL reference had been made to certain terms like freight charges or transportation services which



tend to create an impression that CLL were engaged in transportation of goods services by road and were getting consideration from FCPL in form of freight charges.

7.12 As discussed hereinabove, it appeared that CLL were fleet operator who had deployed vehicles to carry out transportation on instruction and directions of FCPL, the consideration they were receiving was also not determined with reference to the nature, volume or quantity/weight of goods, as in the case of transporters who transport goods by Road but the consideration was to determine with reference to the number of vehicles deployed by CLL (fixed component) and the Kms covered by these vehicles on the directions of FCPL(variable component). Thus, the nature of service provided by CLL was to be determined not with reference to certain terms used in agreement but with on the basis of the nature and essence of the agreement. In this regard, the Hon'ble Apex Court in the case of Super Poly Fabriks Ltd. v. Commissioner - [2008 (10) S.T.R. 545 (S.C.)], laid down the principle of how to read an agreement or contract as under:

*"There cannot be any doubt whatsoever that a document has to be read as a whole. The purport and object with which the parties thereto entered into a contract ought to be ascertained only from the terms and conditions thereof. Neither the nomenclature of the document nor any particular activity undertaken by the parties to the contract would be decisive."*

The contention of CLL that they had undertaken the services of transport of goods by road and had not supplied tangible goods for use was not borne out from the terms and conditions of the agreement entered into with FCPL.

7.13 It was also observed that the decision of the Hon'ble Bombay High Court in the case of Indian National Shipowners' Association v. Union of India - [2009 (14) S.T.R. 289 (Bom.)], was also applicable as the facts of the present case that CLL had deployed vehicles on time charter/hiring basis to FCCL without parting with the right of possession and effective control of such vehicles.

## **8. STATEMENT OF ASSESSEE**

**Statement dated 16.03.2020 of Shri Amit Nanwani, authorized signatory of M/s. Chartered Logistics Limited, Ahmedabad**

8.1. Statement of Amit Nanwani, authorized signatory of M/s. Chartered Logistics Limited, Ahmedabad was recorded under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 and Section 174 of CGST Act, 2017 in Question-Answer format on 16.03.2020, wherein Shri Amit Nanwani stated that:

- He was working as authorized signatory of M/s. CLL and looking after entire affairs relating to taxation matters of M/s. CLL.

- He worked as per the instructions & direction of Shri Lalit Gandhi, Director of M/s. CLL; that M/s. CLL was engaged in providing of taxable service viz. "Transport of Goods by Road/Goods Transport Agency Services" at different places in India and holding Centralized Service Tax Registration No. AAACC7939HST001.
- Details of the amount charged for supply of different vehicles provided by M/s CLL during the contract/agreement dated 25.10.2016 were as under:

S.No.	Make Model of vehicle	Capacity (in Tones)	Fixed Cost per Month (Rs.)	Variable Cost Per KM (in Rs.)
1	407 Pickup	2	17750	12.95
2	407 LPT	2.5	22926	12.95
3	709 LPT	4	21560	14.19
4	909 LPT	7	21560	15.45

- M/s CLL had also been awarded Work order no. FCPL/Solids/2015/196 dated 01/04/2015, Copy of Work order no. 230026267 dated 01/04/2017, Work order no. 230046394 dated 01/04/2018, Work order no. 230069576 dated 01/04/2019 for supply of containerized/ambient vehicles for secondary distribution services to M/s. Fine Tech Corporation Pvt. Ltd., Mumbai.
- They had supplied containerized/ambient vehicles of various capacity on **dedicated basis for transportation of goods for which they have charged amount on monthly basis** under head of Freight /transportation charges as fixed cost per month per vehicle and variable cost per vehicle in operation for the actual kilometres run for a particular vehicle in that month.
- The services provided included transportation of goods in containerized/ambient vehicles for secondary distribution at site which includes services like transportation of goods and upkeep of these vehicles, safe transportation of goods and for on-rout pilferages, maintain consistency and drivers/assistants/ supervisors provided on 24 hours/ day basis and transport supervisors to manage the fleets and to arrange diesel for the aforesaid vehicles for which they had charged service charges, as a fixed cost per month per vehicle and variable cost at agreed rate for containerized/ambient mode vehicles per kilometre per vehicle basis under the head of transportation charges.
- They had raised bill on monthly basis for aforesaid services to M /s. FCPL, and ~~claimed exemption of service tax for said services under Negative list of services under section 66D(p) (i) of Finance Act,1994 and not liable for paying service tax.~~

Statement dated 08.06.2020 of Shri Lalit Gandhi, Director of M/s. Chartered Logistics Limited, Ahmedabad



8.2 Statement of Shri Lalit Gandhi, director of M/s. Chartered Logistics Limited, Ahmedabad was recorded under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 and Section 174 of CGST Act, 2017 in Question-Answer format, on 08.06.2020 (RUD-5) which is reproduced as under: —

**“Q.2:** Kindly peruse the statement dated 16/03/2020 of Shri Amit Nanwani, Authorized signatory of M/s. Chartered Logistics Private limited.

**Ans.2:** I have carefully perused the statement dated 16/03/2020 of Shri Amit Nanwani, Authorized signatory of M/s Chartered Logistics Limited and in the token of the same I put my dated signature on the same. I want to state that few reservations based on work order copies for the F. Y2015-16, FY. 2017-18, F.Y. 2018-19 and F.Y. 2019-20 submitted from time to time with sample bill copies.

I state that our vehicles provide transport services to M/s Finetech Corporation Private limited and other clients whereby our vehicle does not return empty & continue to provide goods transport service to other clients on same trip. Furthermore, we don't provide any loading-unloading service separately to any of client for concerned period

**Que -3:** Please brief about constitution of M/s. Chartered Logistics Ltd., its activities and your function and responsibility in your company?

**Ans-3:** I state that M/s Chartered Logistics Ltd, was incorporated on 16.06.1995. I, Shri Harsh Gandhi, Shri Sandeep Shah, Shri Ashok Kaudia and Smt. Mittal Mistry are the directors of the company. I look after all the affairs & matters included taxation and operation of the company.

**Que.4:** Kindly state that how many branches of M/s Chartered logistics limited are operating its business?

**Ans.4:** I state that from 15 branches M/s Chartered logistics limited are operating its business.

**Que.5:** Kindly provide the details of the companies/ firms to whom your company is providing above said services?

**Ans. 5:** I state that M/s Chartered logistics limited is engaged in providing transportation services to various clients. The names of major clients are given as follow:

1. HUL;
2. ITC
3. GAIL
4. KRIBHCO;
5. GSFC;
6. ONGC;
7. Finetech Corporation Private limited.

**Que. 6:** Please explain about your business model with M/s Fine Tech Corporation Private limited.

**Ans. 6:** I state that we receive work orders from M/s Fine tech Corporation Private limited. We provide their vehicles on the basis of contract between M/s Finetech Corporation Private limited in which as per their requirement to supply goods from their or their clients' warehouses/ stores

located in different locations to their or their clients' Distribution centres, Warehouses etc. located in different locations of the country. We charge the freight amount from them as per LR basis and invoices are generated on monthly basis under freight income head in our books of account.

**Que.7:** Kindly submit copies of all the Contracts/Agreements/ Work orders executed by M/s Chartered Logistics Ltd with M/s. Fine Tech Corporation Pvt. Ltd. effective for the period from October, 2014 to June,2017.

**Ans.7:** We have already submitted Work orders for the F.Y. 2015-16, 2017-18, 2018-19, 2019-20 executed by M/s Chartered Logistics Ltd with M/s. Fine Tech Corporation Pvt. Ltd. effective for the period from October, 2014 to June,2017. However, we have executed transportation work as per same terms and conditions for the F.Y. 2014-15 and 2016-17 and the same will be submitted within a week.

**Que. 8:** Kindly peruse agreement dated 02.01.2017 (executed from 25.10.2016) entered into by M/s Chartered Logistics limited with M/s Finetech Corporation Private limited, Mumbai.

**Ans.8:** I have perused agreement dated 02.01.2017 and I state we have entered into agreement by M/s Chartered Logistics limited with M/s Finetech Corporation Private limited, Mumbai and in token of the same I put my dated signature on it. As other agreements are not available with us, however we have executed transportation work strictly as per the terms and conditions of work order copy received every year.

**Que.9:** As per the Schedule II, Scope of Work of the work orders, M/s Chartered Logistics limited shall deploy adequate number of vehicles at its own cost and expense for provision of Services as per terms of the agreement. Do you agree with that?

**Ans.9:** Yes, we provide transportation services and as and when vehicles are required by M/s Finetech, we provide the same.

**Que10:** Kindly state how many vehicles M/s Chartered logistics limited owned during October,2014 to June,2017 and submit the details of the same.

**Ans.10:** I state that M/s Chartered logistics limited owns approximately 400 vehicles.

**Q.11:** As per the Schedule II, Scope of Work of the work orders, wherein it is stated that as per the Scope of Work M/s Chartered Logistics limited shall appoint one manager at the loading terminal of Company for carrying out coordination/ administrative duties. Do you agree?

**Ans.11:** Yes, we only provide drivers for the respective vehicles to manage the trip.

**Que.12:** Kindly state who supervise the vehicles at place of consignee and consignor while transporting goods for M/s Fine Tech Corporation private limited?

**Ans.12:** I state that the supervision of the vehicles at place of consignee and consignor while transporting goods for M/s Fine Tech Corporation private limited are done through GPS by M/s Chartered logistics limited.

**Que.13:** Kindly submit the copies of invoices along with all the annexures issued to M/s Fine Tech Corporation Private Limited from October,2014 to June, 2017.

**Ans.13:** As the data is bulky, the same cannot be provided. I have submitted the sample copies of the invoices issued to M/s Fine Tech Corporation Private Limited.



**Que.14:** Kindly state how the billing is done by your company to M/s Fine Tech Corporation Private limited?

**Ans. 14:** I state that we raise bills to M/s Finetech Corporation Private limited after 15 days. We do not issue any LR in case of M/s Finetech. I further state that M/s Finetech prepare LR of goods transported during the period and send us after receipt of goods at respective destination. We receive LR from M/s Finetech and prepare invoices for goods transported during the period on the basis of trip sheet prepared by M/s Chartered.

**Que. 15:** As per the above said contract/Agreement entered by M/s Chartered Logistics limited and M/s Fine Tech corporation private limited, Mumbai, it is agreed that M/s Chartered will provide transportation services using ambient vehicles, as per Annexure-1 to the contract/ Agreement, at FCPL DC/CPC locations for secondary (DC to stores)/ Local primary (Inter DC, CC to CPC)/ Regional transportation services. Do you agree with that?

**Ans.15:** Yes, I state that we have entered into contract with M/s Finetech. However, M/s Finetech had issued work orders for every financial year separately detailing period of work, value of carriage, special terms and conditions and payment terms etc.

**Que 16:** As per the above said contract/Agreement entered by M/s Chartered Logistics limited and M/s Finetech corporation private limited, Mumbai, it is agreed that M/s Chartered will provide adequate supervision for smooth operations and to achieve service levels as defined later in KPI (Key performance Index) by FCPL. Do you agree with that?

**Ans.16:** Yes, we work as per work orders allotted by M/s Finetech every year, whereby we supervise our vehicles and loaded goods for the safety as we do for other clients.

**Que.17:** As per the above said contract/Agreement entered by M/s Chartered Logistics limited and M/s Finetech corporation private limited, Mumbai, it is agreed that M/s Chartered will unload the trucks at stores/ other locations belonging to FCPL or its clients and arranging them to put them the same in BOH/area as per FCPL instructions. Do you agree?

**Ans. 17:** No, loading and unloading is done by consignor and consignee only.

**Que.18:** As per the above said contract/Agreement entered by M/s Chartered Logistics limited and M/s Fine Tech corporation private limited, Mumbai, M/s Chartered have supplied containerized vehicles alongwith drivers on 24 hours'/ day basis for said vehicles, is it true?

**Ans.18:** Yes.

**Que.19:** Kindly explain whether any exemptions have claimed by M/s Chartered Logistics Ltd for contracts/ Agreement entered with M/s Finetech Corporation Put. Ltd. for providing transportation services?

**Ans-19.** Yes. I state that we have claimed exemption under Section 66D (p) (i) of Finance Act, 1994 which reads as follow:

- (p) Services by way of transportation of goods
  - (i) by road except the services of
    - a. Goods Transport Agency;
    - b. Courier Agency.

**Que.20:** Kindly state when the truck is loaded with goods of M/s Fine Tech Corporation Private Limited to deliver and when it is unloaded at the destination specified by M/s Finetech Corporation Private limited, do M/s Chartered supply goods for any other company?

**Ans.20:** Yes.

**Que.21:** Kindly read the definition of Business support services which reads as "Support Services of Business or Commerce" means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, infrastructural support services and other transaction processing. As per the definition of Business Support Services in Finance Act, 1994, M/s Chartered Logistics limited have to collect Service Tax from M/s Finetech Corporation private limited and deposit the same to government exchequers. You are providing managing distribution and logistics services to M/s Finetech which is a taxable service. Please offer your comments.

**Ans.21:** No.

**Que.22:** Kindly state whether any Consignment Note/ LR has been issued by M/s Chartered Logistics Ltd to M/s Fine Tech Corporation Put. Ltd.

**Ans-22:** No.

**Que.23:** Kindly state who insures the goods transported by M/s Chartered to M/s Finetech?

**Ans-23:** I state that it is responsibility of M/s Chartered for safe transportation of goods and the same are insured by M/s Chartered.

**Que.24:** Kindly submit the details of freight income received from M/s Finetech during the period from 01.10.2014 to 30.06.2017?

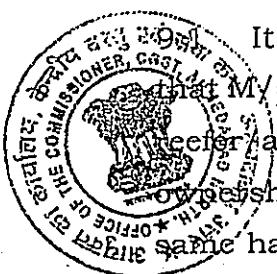
**Ans-24:** I hereby submit the details of freight income received from M/s Finetech during the period from 01.10.2014 to 30.06.2017.

**Que.25:** Kindly peruse the Annexure-A prepared on the basis of amount received from M/s Fine Tech for the period from 01.10.2014 to 30.06.2017 for providing Business support services. On the basis of the ledgers submitted by you the amount of Service Tax liability has been quantified.

**Ans.25:** I have carefully perused the Annexure-A prepared on the basis of amount charged from M/s Fine Tech for the period from 01.10.2014 to 30.06.2017 for providing transportation services and in token of the same I put my dated signature thereon."

#### 9. EVALUATION OF THE ASSESSEE'S SUBMISSIONS:

It was observed from the statement dated 08.06.2020 of Shri Lalit Gandhi, that M/s. CLL were engaged in deployment/ mobilisation of fleet by way of giving their own vehicles to M/s FCPL and the risk and rewards incidental to ownership of the vehicles in this case, had always stayed with M/s CLL and the same had never been transferred to M/s FCPL. Evidently, they had not issued any LR/consignment notes in respect of the goods being transported and the LR/consignment notes were issued by FCCL, as admitted by Shri Lalit Gandhi. In terms of the provisions under the CARRIAGE BY ROAD ACT, 2007 (made effective from



01.03.2011), it was the "common carrier" who, on account of being engaged in transportation of goods by road, was required to issue a goods receipt note/LR in respect of the goods being transported. In the instant case, FCPL had issued the LRs and had undertaken transportation of goods by road. The amount of income from transportation of goods under any category of Services was not shown in the ST-3 returns filed by them for said period.

It appeared that the crux of contention made by Shri Lalit Gandhi for non payment of tax rested on two submissions (i) as they were not issuing any consignment note, they were not liable to be treated as Goods Transport Agency (GTA) as defined under Chapter V of the Finance Act, 1994 and (ii) The nature of service provided by them was transportation of goods by road wherein they don't act as GTA and therefore, they were covered by the Negative list under section 66D(p)(i)(A) and their services were not taxable.

**9.2** It was observed that under the provisions of section 9 of the Carriage by Road Act, 2007 all the "common carriers" (public carriers) were mandatorily required to issue a "Goods Receipt". Evidently, CLL had not issued the said Goods Receipt in the instant case. However, in respect of the same goods, CLL also claimed to be transporter of goods by road. This argument of CLL appeared to be patently devoid of any merits as in respect of any such consignment, there could be only one transporter who was to fulfil the obligations under the Carriage by Road Act, 2007. If the contention of CLL was to be accepted, there would be two entities carrying the goods by road simultaneously claiming themselves as transporters, a position not envisaged in the Law. However, it appeared from the agreements entered into CLL and FCPL that CLL was not the goods transporter but was "fleet/truck operator" who had deployed their own vehicle for use, for transportation of goods on the instructions and directions of FCPL. Therefore, they cannot rightfully claim themselves to be a goods transporter who is not liable to tax in terms of section 66D(p)(i)(A) of the Finance Act, 1994. The service provided by CLL appeared rather distinct service covered as "Declared Service" under section 66E(f) of the Act.

**9.3** Therefore, it appeared that M/s CLL the activity of supplying 45 ambient cooler vehicles for transportation purpose to M/s FCPL was liable to be treated as a declared service of transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods. M/s CLL accordingly appeared liable to pay service tax to government exchequer under statutory provisions of Finance Act, 1994.

In fact, both the General Terms and Conditions guiding the Agreements and the Agreements between CLL and FCPL have acknowledged the possibility of the service being provided by CLL may be subject to levy of service tax. Under Para 3.5 of Clause 3 of the General Terms and Conditions and Para 3 of the Clause III of agreement dated 25.10.20 12, it is clearly provided that

3.5 All payments made by company to Road Truck Operator hereunder shall be subject to deduction of tax at source as per the income tax regulations in force from time to time. A certificate of the tax deducted at source evidencing deduction of income tax from the payment made shall be issued by Company within the number of days of such payments as allowed under the Income Tax regulations. Company shall pay to the Road Truck Operator amount of service tax as per Applicable Laws on the amounts paid by Company to the Road Truck Operator pursuant to clause 3.1 above. Road Truck Operator shall promptly provide to company copy of challan as proof of payment of service tax to the concerned tax authority. (General Terms and Conditions)

3. The transportation rates are inclusive of all cost of the truck operator i.e. direct, indirect and incidental to transportation & operation of business including way side expenses but excluding Toll charges (where agreed separately) & service tax if applicable. (Agreement dated 25.10.2012)

It is rather surprising that despite presence of explicit provisions in the agreements, CLL have chosen not to pay the service tax as applicable.

#### **10. Discussion on scrutiny of documents/record and statements of assessee:**

10.1 Therefore, it was observed from the documents provided during the investigation, statements recorded during investigation, that M/s CLL had claimed to have provided Goods Transportation Services by way of transportation of goods to M/s FCPL. But, CLL had provided a fleet of 45 vehicles of various capacity on hire basis for the purpose of transportation of goods as 'declared services' to M/s FCPL during the period from October, 2014 to June, 2017. The services provided by M/s CLL appeared to be falling under the purview of "Goods Transportation Services" defined under Section 65B (44). Scrutiny of the documents revealed that they had received gross consideration for rendering of such services for the period Oct.2014 to June,2017.

10.2 M/s CLL had deployed their fleet of 45 vehicles for M/s FCPL on exclusive basis for 24 hours a day and provided sufficient drivers/supervisors



as per conditions laid down by M/s FCPL and agreed upon by both of them. M/s CLL was liable for penalty as per the terms and condition detailed in clause 3.7 of schedule III of work order in case of failure to provide the within 24 hours of the intimation or within the date and time mentioned in the general terms and conditions. The said conditions clearly established that M/s CLL had exclusively rendered supply of vehicles on hire basis to M/s FCPL and provided taxable services under the provisions Finance Act, 1994.

**10.3** The risk and rewards incidental to ownership of the vehicles in this case, had always stayed with M/s CLL and the same had never been transferred to M/s FCPL. M/s CLL had never transferred right of possession and effective control on the vehicles deployed for the transportation of goods to M/s FCPL to whom they had supplied ambient vehicles. It therefore appeared that they had rendered '**declared services**' and received gross consideration.

**10.4** The Transfer of right to use goods is a well-recognized constitutional and legal concept. Every transfer of goods on lease, license or hiring basis does not result in transfer of right to use goods. 'Transfer of right of goods' involves transfer of possession and effective control over such goods. Transfer of custody along with permission to use or enjoy such goods, per se, does not lead to transfer of possession and effective control. In the instant case, although vehicles had been deployed at the various locations of FCPL, the permissions or licenses continued to be with CLL and not with FCPL. The agreement between both parties was a license to use the vehicles did not involve transfer of the right to use. M/s CLL had not paid VAT / Sales Tax on the transactions with M/s FCPL. It appeared from the agreements/ work orders that the nature of transactions between M /s CLL and their clients had not involved transfer of right to use vehicles and therefore, the consideration collected by M/s CLL from their clients appeared liable for service tax under the category of Section 66E(f) of the Act. The contract/agreement between M /s CLL and M/s FCPL was not for sale of vehicles within the meaning of the expression in Article 366(29-A) (d) of the Constitution, as the contract in question was contract for transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods. The agreements were of the nature of an operating lease with the effective control of the vehicles resting with M /s CLL. M/s CLL borne the cost of repairs and maintenance and risk of obsolescence also rested with him. In contrast, M/s. FCPL was not involved with the transfer of the risks and rewards associated with vehicles. Therefore, it appeared that said services rendered by M/s CLL to M/s FCPL in respect of hiring of vehicles appeared to be covered under the purview of "Taxable Services" defined under Section 65B

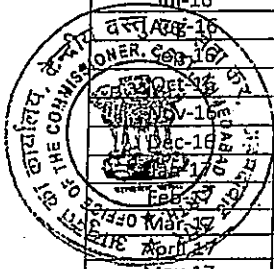
(44) read with clause (f) of Section 66E of the Act. It also appeared that the view of M/s CLL that services being provided by them to M/s FCPL would fall under negative list of services under section 66D(p) (i) of Finance Act, 1994 was nothing but a camouflage to mis-classify the service provided by them in order to shift the liability of payment of service tax towards M/s FCPL.

**11. QUANTIFICATION OF SERVICE TAX EVADED UNDER 'DECLARED SERVICES' BY M/S CHARTERED LOGISTICS LIMITED, AHMEDABAD**

11.1 It therefore, appeared that M/s CLL had charged and had received gross consideration towards services provided to M/s FCPL as declared service on transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods by way of supplying 45 ambient/ reefer vehicles. They received a total taxable income of Rs. 30,32,48,959/- in respect of services provided by them during the period **Oct.2014 to June,2017** and the amount of service tax leviable thereon was Rs 4,16,81,579/- (S. Tax of Rs.4,02,89,125/-+ Edu. Cess of Rs. 2,59,887/-+ S.H. Edu. Cess of 1,29,944/-+ S. B. Cess of Rs. 6,10,647/-+ KKC of Rs. 3,91,976/) as tabulated in Annexure-A, which appeared to have been evaded by CLL:

Annexure-A

Month	Taxable Value as per sales ledger (Rs.)	Service tax Rate	Service Tax (in Rs.)	Edu. Cess 2% of Tax	SHE Cess @ 1% of Tax	SB Cess @ .5% of taxable value	KK Cess @.5% of taxable value	Total Service Tax (in Rs.)
Oct., 2014	15320575	12%	1838469	36769	18385	0	0	1893623
Nov.,2014	12213802	12%	1465656	29313	14657	0	0	1509626
Dec., 2014	11475657	12%	1377079	27542	13771	0	0	1418391
Jan., 2015	10004797	12%	1200576	24012	12006	0	0	1236593
Feb.,2015	14809676	12%	1777161	35543	17772	0	0	1830476
March, 2015	29453860	12%	3534463	70689	35345	0	0	3640497
April, 15	39854	12%	4782	96	48	0	0	4926
May,15	14968218	12%	1796186	35924	17962	0	0	1850072
June, 15	14620382	14%	2046853	0	0	0	0	2046853
July, 15	14198632	14%	1987808	0	0	0	0	1987808
Aug,15	16262490	14%	2276749	0	0	0	0	2276749
Sep,15	13980641	14%	1957290	0	0	0	0	1957290
Oct, 15	13770953	14%	1927933	0	0	0	0	1927933
Nov,15	9324324	14%	1305405	0	0	46622	0	1352027
Dec, 15	7655412	14%	1071758	0	0	38277	0	1110035
Jan, 16	5077325	14%	710826	0	0	25387	0	736212
Feb,16	6244127	14%	874178	0	0	31221	0	905398
Mar-16	11640988	14%	1629738	0	0	58205	0	1687943
Apr-16	1432675	14%	200575	0	0	7163	0	207738
May-16	2359460	14%	330324	0	0	11797	0	342122
Jun-16	6085132	14%	851918	0	0	30426	30426	912770
Jul-16	4179824	14%	585175	0	0	20899	20899	626974
Aug-16	6262557	14%	876758	0	0	31313	31313	939384
Sep-16	6298905	14%	881847	0	0	31495	31495	944836
Oct-16	9224939	14%	1291491	0	0	46125	46125	1383741
Nov-16	7876937	14%	1102771	0	0	39385	39385	1181541
Dec-16	7227727	14%	1011882	0	0	36139	36139	1084159
Jan-17	8580079	14%	1201211	0	0	42900	42900	1287012
Feb-17	4895912	14%	685428	0	0	24480	24480	734387
Mar-17	8779946	14%	1229192	0	0	43900	43900	1316992
Apr-17	2340333	14%	327647	0	0	11702	11702	351050
May,17	2764288	14%	387000	0	0	13821	13821	414643
June,17	3878532	14%	542994	0	0	19393	19393	581780
	<b>303248959</b>		<b>40289125</b>	<b>259887</b>	<b>129944</b>	<b>610647</b>	<b>391976</b>	<b>41681579</b>



**11.2** The detailed investigation carried out in the instant case revealed that M/s CLL had never declared value of such taxable services in their ST-3 returns and never intimated the Service Tax department about their actual nature of services so provided to M /s FCPL by deploying fleet of vehicles. They had suppressed the value of 'declared service' i.e. "transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods falling under Section 66E(f) of Finance Act, 1994 and evaded service tax on supply of such taxable services during the period from October, 2014 to June, 2017.

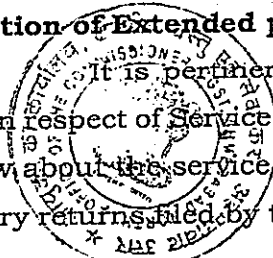
## **12. FINAL OUTCOME OF THE INVESTIGATIONS:**

**12.1** It appeared from the above that M/s Chartered Logistics Limited, Ahmedabad had provided declared service of "transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods" as defined under Sub-Section (22) of Section 65 read with Clause (f) of Section 66E of Finance Act, 1994 to M/s FCPL, Mumbai by way of supplying a fleet of 45 vehicles for the purpose of transportation of various goods and charged and collected consideration in monetary forms from them. From combined reading of provision of Section 66D, Section 65B(44), Section 65B(51) and Clause (f) of Section 66E, it appeared that the services provided by M/s CLL to M/s. FCPL did not fall in the Negative List, as defined in Section 66D(p)(i)A of Finance Act, 1994, hence the said services were 'taxable services' and they were liable to pay appropriate service tax leviable on the consideration received from M/s FCPL.

**12.2** On going through the documents/records submitted by M/s CLL, it appeared that they had received a Gross Consideration amounting to Rs. 30,32,48,959/- thereon, for providing taxable services i.e. "transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods" during the period from October, 2014 to June, 2017. It appeared that CLL had camouflaged their actual provision of service so rendered by them to M/s FCPL as transportation services with intention to claim exemption on taxable value illegally and suppressed their actual taxable income by not declaring the same in their ST-3 returns from the service tax department. Hence, they appeared to have suppressed their actual nature of service provided by them and the taxable value from the department, with an intent to evade payment of tax of Rs 4,16,81,579/- (S. Tax of Rs.4,02,89,125/- + Edu. Cess of Rs. 2,59,887/- + S.H. Edu. Cess of 1,29,944/- + S. B. Cess of Rs. 6,10,647/- + KKC of Rs. 3,91,976/-) as worked out in Annexure-A attached to the SCN.

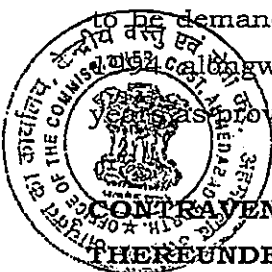
### **Invocation of Extended period**

**13.** It is pertinent to mention here that the system of self-assessment is in vogue in respect of Service Tax. In the scheme of self-assessment, the department comes to know about the service rendered and payment made only during the scrutiny of the statutory returns filed by the service providers. Therefore, it places greater onus on the



assessee to comply with higher standards of disclosure of information in the Statutory returns. It was the fact that emerged during the investigation of the instant case that M/s CLL had suppressed their actual nature of services provided by way of transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods by misdeclaring it as services falling under negative list with an intent to evade payment of tax and failed to disclose the above details in their ST-3 Returns during the aforesaid period. Thus, it appeared that they had Suppressed the material facts from the Department by not disclosing in their ST-3 Returns. This appeared to have been done intentionally so as not to bring their activities to the notice of the Department, though they were registered for providing various taxable services, as discussed earlier. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax behaviour. The responsibility of the tax payer to voluntarily make information disclosures is much greater in a system of self-assessment. The omission or commission on the part of M/s CLL clearly demonstrated the intention of M/s. CLL to evade payment of service tax, though they being well aware of the unambiguous provisions of the erstwhile Finance Act, 1994 and Rules made there under, they failed to disclose to the department at any point of time, regarding the claiming of exemption and non-payment of service tax on amounts recovered by them, during the period from October, 2014 to June, 2017. M/s CLL had deliberately not shown in their ST-3 Returns, the actual service rendered by them and service tax involved thereon, with intent to evade the Proper payment of service tax. These facts would not have come to light if the investigation was not conducted by DGGI officers. Therefore, the extended period of limitation as envisaged under proviso to Section 73(1) of the erstwhile Finance Act, 1994 appears to be rightly invocable to demand Service Tax for the period October, 2014 and June, 2017 alongwith applicable interest under Section 75. It also appeared that the act of omission or commission on the part of M/s. CLL, constitutes offence punishable under Section 78 or Section 76 of the Finance Act, 1994. Therefore, the assessee appeared to have rendered themselves liable for penalty under Section 76 and/or Section 78 of the Finance Act, 1994.

14. Thus, the Service tax of Rs 4,16,81,579/- (S. Tax of Rs.4,02,89,125/-+ Edu. Cess of Rs. 2,59,887/-+ S.H. Edu. Cess of 1,29,944/-+ S. B. Cess of Rs. 6,10,647/-+ KKC of Rs. 3,91,976/-) on taxable service provided under the provision of Section 66E(f) of the Act, during the period 01.10.2014 to 30.06.2017 by M/s. CLL to M/s. FCPL, is required to be demanded and recovered under the proviso to Section 73(1) of the Finance Act, 1994 alongwith applicable interest and penalty, by invoking the extended period of five years as provided thereunder.



**CONTRAVENTION OF PROVISION OF FINANCE ACT,1994 AND RULES FRAMED THEREUNDER:**



15. In light of the facts discussed hereinabove and the material evidences available on records, it was revealed that M/s Chartered Logistics Limited, Ahmedabad had contravened the following provisions of Chapter V of the Finance Act, 1994 and the Service Tax Rules, 1994 with intent to evade payment of Service Tax in respect of "taxable Services" as defined under the provisions of Section 65B (51) of Finance Act, 1994, provided by them to their service receivers during the period from 01.10.2014 to 30.06.2017:

(i) Section 67 of the Finance Act, 1994 in as much as they had failed to determine the net taxable value of taxable service and declared the same to the department.

(ii) Section 68 of the Finance Act, 1994 and Rule 6 of the Service Tax Rules, 1994, as amended, in as much as they had not paid the appropriate service tax on the taxable services provided by them.

(iii) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as they had failed to furnish proper periodical returns in form ST-3 mentioning the particulars of the aforesaid taxable service provided by them, the value of taxable service determinable and other particulars in the manner as provided therein and incorporating the required information to the jurisdictional Superintendent of Service Tax.

16. They also appeared to have made themselves liable to penalty separately under the provision of Section 77(1) (b) of the Finance Act, 1994, for having failed to keep, maintain or retain books of account and other documents as required in accordance with the provision of Act and Rules made thereunder. Therefore, penalty under Section 77(1) (b) of the Finance Act, 1994 appeared to be leviable on CLL.

17. Therefore, the Show Cause Notice dated 31.08.2020 was issued to M/s. Chartered Logistics Ltd. requiring them to Show Cause as to why: -

(a) The benefit of exemption availed under Section 66D (p) (i) of Finance Act, 1994, as amended, should not be denied to them;

(b) The service of deployment and mobilization of vehicles to their service receiver should not be classified and treated as "declared services" of transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods, is specified under Section 66E(f) of the Act;

(c) Service Tax amounting to Rs 4,16,81,579/- (S. Tax of Rs.4,02,89,125/-+ Edu. Cess of Rs. 2,59,387/37+ S.H. Edu. Cess of 1,29,944/-+ S. B. Cess of Rs. 6,10,647/-+ KKC of Rs. 3,91,976/-) (Rupees Four Crore, Sixteen lakhs, Eighty-One Thousand, Five hundred and Seventy Nine only), not paid during the period from 01.10.2014 to

30.06.2017, as shown in Annexure-A to the Notice, should not be demanded and recovered from them, under proviso to Section 73 (1) of the Act;

(d) Interest at the applicable rates on the amount of service tax payable on the amount, as mentioned in (c) above, should not be recovered from them under the provisions of Section 75 of the Act;

(e) Penalty should not be imposed on them under Section 76 and/or 78 of the Act, for non-payment of service tax by deliberate and willful misstatement, suppression of facts and contravention of provisions of the said Act and the rules made there under as discussed above with an intent to evade payment of service tax;

(f) Penalty should not be imposed upon them under Section 77(1)(b) of the Act for having failed to keep, maintain or retain books of account and other documents as required in accordance with the provision of Act and Rules made thereunder.

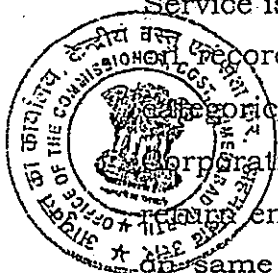
### **DEFENCE REPLY:**

M/s. CLL have submitted their written submissions wherein they have stated as under:

#### **18.01 Defence reply dated 09.10.2020:**

They were in the business of providing services by way of transportation of goods/Goods Transport agency.

- The conclusion drawn in para-2 of the SCN, was without appreciating the facts of the case in proper perspective and without looking into the documents/records at the time of inquiry by DGGI, reached on conclusion that they have operated and maintained the Reliance owned reefer/ ambient refrigerated vehicles and also supplied containerized vehicles on dedicated basis along with drivers and transport supervisors on 24 hours per day basis to manage the fleet of said vehicles and for safe transportation of goods. The observation leading to show cause notice was not supported by any conclusive documents since services provided were in fact services by way of transportation of goods not as a Goods Transportation Agency and such Service is exempted from levy of GST. In fact, in course of inquiry as well as recording of statement of Director as well as authorised signatory had categorically stated that vehicles provided transport service to M/S. Fintech Corporation Private Limited and other clients whereby their vehicles do not remain empty & continue to provide Goods transport service to other clients on same trip. In fact, they were engaged in providing services to various clients and in reply to Answer 5, they had provided names of Major clients to whom they had provided services including services including services to

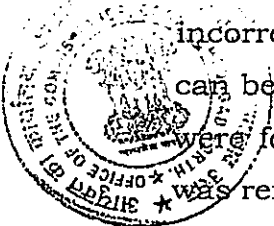


multinational companies like HUL, ITC, GAIL, KRIBHCO, GSFC, ONGC and also to Fintech Corporation Private Limited. It may be appreciated from 26AS copies (Attached in Annexure "B") that they were engaged in providing transportation services and not providing any Business Auxiliary services nor covered under Declared services of transfer of Goods by way of hiring, Leasing, Licensing or any other manner without transfer of right to use such goods.

- They used to receive work order from M/S. Fintech Corporation Private limited and provide them vehicle on the basis of Contract between M/S. Fintech Corporation Private Limited in which as per their requirement to supply goods from their clients' warehouse/stores located in different location to their or their client Distribution centres, warehouse etc. located in different location of the country. They used to charge freight amount as per LR basis and invoices generally on monthly basis under Freight Income. It may be appreciated from the sample copy of invoices that consolidated Invoice issued for different shipment under Invoice wherein for delivered quantity amount was charged based on Freight Rate based on contract terms. (Annexure "C"- Sample Invoice for the period under show cause notice along with copies of LR/Consignment Note and Ledger Copy for the Period 2014-15 to 2017-18 -Upto 30/6/2017). This fact was deposed in reply to Question 6 of statement of Director shri Lalit Gandhi. Further in reply to system of Billing done by Company, it was categorially recorded that M/s. Fintech prepared LR of goods transported during the period and send receipt of goods at respective destination. On the basis of LR received from Fintech, Invoices were prepared for goods transported during the period based on trip sheet prepared by them. They had also transported fruits and vegetables for Naroda, for Fine Tech. The same income was exempt otherwise in terms of Sr. No. 21 of Notification No. 25/2012-ST.
- After unloading the goods of Fine Tech, they used to supply goods for other company. This fact was deposed in reply to Question 20 of the statement of Shri Lalit Gandhi. Reference to Trip Details of Truck, clearly showed that it was not the case where truck was dedicatedly used for Fine Tech. The Company used its own truck as well as truck taken on hire from Transportation.
- They were issued various summons to tender documents, and prolonged inquiry was without following Board's Instruction. The action under Section 14 was to be taken as a last resort in case where assessee were not cooperating of investigation were to be completed expeditiously. They were not provided the copies of summon and replies of M/s. FCPL and M/s. RSOPL,

which have relied upon against them. They requested to supply the same for cross examination.

- The SCN has been issued for demanding the service tax under Declared service on gross consideration towards service provided to M/s. FCPL as declared service on transfer of goods by way of hiring, leasing or any such manner without transfer of right to use such goods by way of supplying 45 ambient / reefer vehicles. The sample invoices submitted by them did not suggest and prove that services provided are by way of transfer of right to use such goods by way of supplying 45 ambient/reefer vehicles but in Fact Company has also provided Goods Transport Services to Fine Tech Corporation Pvt Ltd for Polymer Goods. The Transportation charges received were not limited to Vehicles as pointed out in statement recorded for Amit Nanwani, but also for Services rendered for Transportation of other goods but Office of DGGI has taken entire Transportation Income for Vehicle from Reliance owned Reefer/ambient Refrigerated Vehicle and Containerised Vehicle and raised Show cause Notice which was factually and legally not tenable and was required to be dropped.
- They had submitted Documents viz. Audited Balance Sheet/Profit and Loss Account, Copy of Work order with Principal transporter M/S FCPL, Copies of Sample Invoices raised in respect of the impugned Services, sales Ledger Account for the aforesaid period under Notice, as and when called for during the investigation. But, rather than verifying the details in total perspective, including Sample Invoices, Consignment Details, Trip details of Truck, business transaction with other Clients with the same Fleet of Vehicles made available to FCPL, entire SCN is heavily weighed on Agreement Dated 25/10/2012 and considered and interpreted entire receipt from FCPL, towards deployment and mobilisation of ambient Vehicle. In fact, Out of total freight recovery of Rs.30,32,48,959 for the period Oct-14 to June-17 was not only for the said ambient vehicle but also towards Transportation of other Material viz. polymer material for Reliance. In fact from the shipping Quantities, it may be appreciate that Vehicle type/tonnage mentioned in Agreement dated 25/10/2012 and size of vehicle actual used in transportation business services provided to FCPL were entirely different and incorrect to interpret that service tax was liable on total freight recovery. It can be judged from sample Copies of Invoices, Vehicle used in transportation were for tonnage of more than 20 MT whereas statement of Amit Nanwani was referring to amount charged for Supply of different Vehicle were in range of 2 to 7 tones only. Even in statement it was mentioned that they had been awarded different work order, but in the SCN only one agreement was



considered and interpreted negatively ignoring other agreements. In fact, even amount realised towards Fixed cost and variable cost from FCPL, the same are also covered under Sr. No. 22(b) of exemption notification No.25/2012 Dated 20/6/2012 and not liable for Service Tax.

- Sr No. 22(b) of Notification No. 25/2012-ST provides exemption to services of hiring of Vehicle by GTA for transportation of goods. Ambient vehicle were used in transportation of goods only and accordingly, consideration received by them for providing these vehicles on hire to Principal Transporter agency FCPL will also be exempted under the clause 22(b) of Notification No.25/2012 and view thereof, company is of the view that No service tax is liable and accordingly request to drop SCN. The SCN has wrongly interpreted their service to be declared service of Transfer of Goods by way of hiring, Leasing, Licensing without transfer of right to use such goods. In fact, they were providing services to Goods Transport Agency.
- The clauses of Agreement have been discussed in para 5 of the SCN, but the SCN has completely over looked the clause 22 whereby the consideration received by the person for providing the vehicles on hire to goods transport agency for transportation of goods, was exempt from payment of service tax.
- Para 6 of the SCN mentioned the clauses of General Terms and Conditions of the Agreement dated 25.10.2012. Clause 2.0 clearly states that Road truck operator shall provide services to Company on nonexclusive basis in accordance with the terms and condition of this agreement, applicable laws, applicable permits, operation protocol and scope of work. Further, it has been specifically mentioned under scope of Work Schedule II that Road Truck operator shall render all services as transporter. However, for ensuring smooth transport operation, terms and condition provided under various clauses of the said agreement for Vehicles, Personnel, Transportation, Safety, Cases of theft, Accident, cannot be interpret to judge that Services are in nature of Supply of Tangible goods.
- The allegations has been made without going into the agreement in its entirety. However, Work order as referred in para 6 of SCN General Terms and Condition Schedule III provided pricing and Mechanism, wherein it had been mentioned that in Consideration of Services provided by road Truck operator to the satisfaction of Company, Company would pay to the Road Truck operator Freight charges as communicated from time to time Freight rates provided under Schedule IV, but SCN has completely ignored the said facts and just relied on Consideration as mentioned only for agreement in respect of deployment of Ambient and refrigerate Vehicles for Transportation

of Goods. In fact, initial observation of SCN in para 7.14 supports their contention that the service provided by them were covered under services as Transportation of goods and covered under Negative list of Services vide Section 66D(p)(i) of finance Act in respect of Work order Dated 01/04/2016.

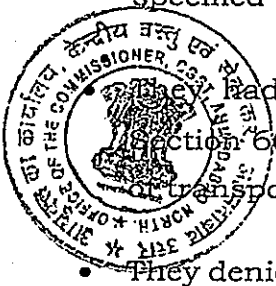
- Even for sake of reasoning that they had placed their truck at the disposal of the service recipient on time charter basis (which was not the case here), the same was exempt from service tax under Clause 22 (b) of Exemption Notification No. 25/2012-ST i.e. Services by way of giving on hire — (b) to a Goods transport agency, a means of Transportation of goods.
- They requested to grant personal hearing.

#### 18.2 Defence reply dated 24/01/2022.

- Evidently based on agreement, they were providing transportation services to M/s FCPL by using ambient and refrigerated vehicles. As per the agreement, M/s FCPL had paid consideration to them on the rate and terms as per the billing process specified in clauses III and IV of the agreement at the rates specified in the agreement dated 25.10.2016.
- M/s FCPL had agreed to pay transportation/freight charges against the services provided by them by using ambient/ reefer vehicles on the basis of rates mentioned in Annexure-2 of the said agreement.
- As per the terms of the agreement, they had provided fully operational ambient and reefer trucks, manned by drivers and supervisor for the duration of the agreement to M/s. FCPL to provide the service of transportation of goods to M/s FCPL. They had placed their trucks at the disposal of M/s FCPL on time charter basis along with transfer of the right of possession and effective control over the same.
- The vehicles were to be used for transportation of goods by them strictly on the directions and orders of M/s FCPL. They did not have the discretion to choose the route for movement of trucks. As per Para 22 of Clause V of the agreement dated 25.10.2016, drivers were to follow the route approved and specified by M/s. FCPL.

They had claimed exemption under the Negative List as provided under Section 66D(p)(i) with effect from 01.07.2012 which exempts services by way of transportation of goods from service tax.

- They denied all the charges levelled against them vide SCN dated 31.08.2020.



- In view of the decision of the Hon'ble Supreme Court in the case of M/s Canon India Private Limited - **2021 (3) TMI 384- SUPREME COURT**, they stated that the Board's Circular dated 05.07.2017, assigning the functions of proper officer to various central tax officers has been issued without the authority of law. Therefore, the Board's Circular No. 3/3/2017 dated 05.07.2017 as amended by Circular No.31/05/2018-GST dated 09.02.2018, is invalid and illegal. Accordingly, only the Commissioner posted in Board or the Joint Secretary posted in Board are the proper officer as per Section 2(91) of the CGST Act, 2017 who can alone issue SCN under Section 73 or Section 74 of the CGST Act, 2017. Thus, SCN issued by any officer other than Commissioner in Board or the Joint Secretary posted in Board is required to be considered as issued without jurisdiction. The SCN issued by the Additional Director General of the DGGI, is liable to be dropped for want of jurisdiction.
- The SCN issued was required to be decided in one year Section 73(4B) of the Finance Act, 1994. The present show cause notice was issued on 31.08.2020, the same cannot be adjudicated at this stage, as the time period of 1 year from the date of notice has already lapsed. In this regard they have relied upon the decision of Hon'ble Delhi Court in the case of **Sunder System Pvt. Ltd. v. Union of India & Ors.** reported in **2020 (1) TMI 199-- Delhi High Court**. The Department had issued a personal hearing notice for the first time to them only in October 2021. Thus, the present show cause notice can not be adjudicated at this stage i.e. after the lapse of one year from the date of notice in terms of Section 73(4B) of the Finance Act, 1994.
- They had entered into agreements with M/s FCPL for deploying fleet of ambient and reefer trucks and providing transportation services to M/s FCPL using these vehicles alongwith adequate drivers and supervisors as per the terms of the agreement. M/s FCPL had paid consideration i.e. transportation/freight charges to them for said service on the basis of the rate and terms as per the billing process specified in clauses III and IV of the agreement at the rates specified in Annexure-2 of the agreement. They had not issued any consignment note while transporting the goods on behalf of M/s FCPL. Thus, as they were not issuing any consignment note, they were not liable to be treated as Goods Transport Agency (GTA) as defined under Chapter V of the Finance Act, 1994. The nature of service provided by them was transportation of goods by road wherein they had not acted as GTA and therefore, they were covered by the Negative List under Section 66D(p)(i) of the Finance Act, 1994 and their services were not liable to service tax.

- The definition of "Service" as provided under Section 65B(44) of Finance Act does not include "***such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution***". Further, the "Supply of Tangible Goods for Use" has not been defined under the Act, but the same was defined under erstwhile section 65(105)(zzzzj) of the Finance Act, 1994, as follows:

*"to any person, by any other person in relation to supply of tangible goods including machinery, equipment and appliances for use, without transferring right of possession and effective control of such machinery, equipment and appliances"*

- Further, the CBEC Education Guide at para 6.6.1 has explained the scope of phrase 'transfer of right to use such goods' as follows:

*"Transfer of right to use goods is a well-recognized constitutional and legal concept. Every transfer of goods on lease, license or hiring basis does not result in transfer of right to use goods. 'Transfer of right to goods' involves transfer of possession and effective control over such goods in terms of the Supreme Court in the case State of Andhra Pradesh v. RINL. Transfer of custody along with permission to use or enjoy such goods, per se, does not lead to transfer of possession and effective control."*

- They have stated that from the above, it can be inferred that the following three conditions need to be satisfied so that a particular transaction is exigible to service tax under the said category of supply of tangible goods service:

- (i) the said service should have been provided by a person to any other person;
- (ii) the said service is in the nature of supply of tangible goods including machinery, equipment and appliances, by way of hiring, leasing, licensing or in such manner goods that the above tangible goods are supplied for use;
- iii) the said supply is ***without the transfer of right to use the goods and effective control*** of such machinery, equipment and appliances.



The letter was issued by the Ministry of Finance vide **D.O.F. No. 334/1/2008-TRU dated 29.2.2008**, wherein the scope of Supply of Tangible Goods for Use was explained. According to which, the transfer of the right to use any goods was leviable to sales tax/VAT as deemed sale of goods and transfer of right to use involved transfer of both



possession and control of the goods to the user of the goods. It was further clarified in the said letter that transaction of allowing another person to use the goods, without giving the legal right of possession and effective control, not being treated as sale of goods, was to be treated as service. It was also clarified that supply of tangible goods for use and leviable to VAT/sales tax as deemed sale of goods, was not covered under the scope of the newly introduced service.

- Therefore, they have stated that the transactions involving tangible goods can be classified into three categories (apart from the transaction of sale of goods, gift, etc.) as below:

i) Supply of tangible goods along with the transfer of right of possession and control of the said goods to the transferee- Deemed sales as transfer of right to use goods

ii) Supply of tangible goods for use without transferring right of possession and effective control' of the said goods

iii) Supply (providing) of service by using the tangible goods

- The transaction carried out under the agreement between them and M/s FCPL was purely for transfer of right to use the ambient and reefer vehicles where the possession and control of the vehicles were transferred for the exclusive use of the hirer i.e. M/s. FCPL.
- They had deployed the vehicles to M/s FCPL and had granted the right to use the vehicles, thus, they were not liable to pay service tax on the right to use the goods. The term "transfer of right to use goods" has not been defined in any of the Acts, however, this term has been interpreted in various judgments by various courts including the Hon'ble Supreme Court. The Hon'ble Andhra Pradesh High Court in the case of **Rashtriya Ispat Nigam Ltd. v. Commercial Tax Officer** reported in (1990) 77 STC 182 wherein the term 'Transfer of right to use goods' was dealt. The said decision was confirmed by the Hon'ble Supreme Court in the case of **State of Andhra Pradesh v. Rashtriya Ispat Nigam Ltd.** reported in (2002) 126 STC 114.
- They have also relied upon the decision of Hon'ble High Court of AP, in the case of **G.S. Lamba & Sons, Secunderabad & Others Vs. State of Andhra Pradesh** reported in (2011) 52 APSTJ 191.
- They have also placed reliance on the decision of the Hon'ble Supreme Court in the case of **Bharat Sanchar Nigam Ltd. v. Union of India** reported in (2006) 143 STC 91 (SC), wherein it was observed that to constitute transfer of right to use goods, the transaction must have the following attributes:

- (a) There must be goods available for delivery;
- (b) There must be a consensus ad idem as to the identity of the goods;
- (c) The transferee should have a legal right to use the goods - consequently all legal consequences of such use including any permissions or licences required therefore should be available to the transferee;
- (d) For the period during which the transferee has such legal right, it has to be the exclusion to the transferor - this is the necessary concomitant of the plain language of the statute - viz., a "transfer of the right to use" and not merely a licence to use the goods;
- (e) Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same rights to others.

- They have cited the decision of the Hon'ble High Court of Gauhati in the case of **HLS Asia Ltd, vs. State of Assam and Ors., (2003) 132 STC 217 (Gauhati)**, in support of their plea/case.
- They have also cited the Board's **Circular No. 198/8/2016-S.T., dated 17-8-2016**, and have reproduced the text of said circular in support of their arguments as under:

*"2. The matter has been examined. I am directed to draw your attention to the fact that in any given case involving hiring, leasing or licensing of goods, it is essential to determine whether, in terms of the contract, there is a transfer of the right to use the goods. Further, the Supreme Court in the case of Bharat Sanchar Nigam Limited v. Union of India, reported in 2006 (2) S.T.R. 161 (S.C.), had laid down the following criteria to determine whether a transaction involves transfer of the right to use goods, namely,*

- a. There must be goods available for delivery;*
- b. There must be a consensus ad idem as to the identity of the goods;*
- c. The transferee should have a legal right to use the goods - consequently all legal consequences of such use, including any permissions or licenses required therefor should be available to the transferee;*

*For the period during which the transferee has such legal right, it has to be the exclusion to the transferor this is the necessary concomitant of the plain language of the statute - viz. a "transfer of the right" to use and not merely a licence to use the goods;*

- e. Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same right to others.*



.....

4.1 *There will also be cases involving either a financial lease or an operating lease. The former generally involves a transfer of the asset and also the risks and rewards incident to the ownership of that asset. This transfer of the risks and rewards is also recognised in accounting standards. It is generally for a long term period which covers the major portion of the life of the asset and at the end of the lease period, usually the lessee has an option to purchase the asset. The lessee bears the cost of repairs and maintenance and risk of obsolescence also rests with him. In contrast, an operating lease does not involve the transfer of the risks and rewards associated with that asset to the lessee. It is for a short term period and at the end of the lease period the lessee does not have an option to purchase the asset. The cost of repairs, maintenance and obsolescence rests with the lessor."*

- They have argued that the subject matter of the agreement between the parties in instant case, was vehicles, which are tangible goods. The vehicles were transferred by them to M/s. FCPL for their use as per the agreement. They have further stated that once the vehicles were supplied to M/s. FCPL for their use, the rights as existing with them terminated when the vehicles were transferred and vested with M/s. FCPL. In this regard, the vehicles supplied by them could not be used by them for any activity other than those specified in the agreement. Further, they did not have the discretion to choose the route for movement of the trucks as specified in Para 22 of Clause V of the 'Operational Rules' of the contract dated 25.10.2012 between the parties.
- They have stated that there was consensus ad idem between the parties that the vehicles shall be transferred by them only for the use of M/s. FCPL by transferring control and possession of the vehicles and not to provide any kind of service.
- They have fully complied with all the tests as laid down in the case of BSNL to hold that there was a transfer of right to use the vehicles in the following manner:

Sl. No.	Tests laid down	Conditions Satisfied by them
1.	There must be goods available for delivery	The subject matter of the agreement between the parties is the ambient and reefer trucks for their intended use which is goods and is in deliverable State. Hence, the first condition is satisfied.
2.	There must be a consensus ad idem	There was a clear consensus ad idem between the parties as to the nature and

		subject matter of the transaction shall be the vehicles. Further neither M/s FCPL nor they intended to receive/ provide any service, and the same was clear from the agreement entered into between them. Also, there was consensus ad idem between the parties that the vehicles was to be transferred by them only for use by M/s. FCPL.
3.	Transferee must have exclusive right to use the goods	During the subsistence of the agreement, M/s. FCPL alone had the right to use the vehicles and even they could not trespass that right of M/s FCPL.
4.	The owner cannot again transfer the same rights to others	Once the vehicles were deployed to M/s. FCPL for their use, they could not simultaneously permit any other person also to use the very same vehicles during the subsistence of the agreement. The vehicles transferred by them were for the exclusive use of M/s. FCPL. It is clear between the parties that they could not deploy the vehicles to any other party during the term of the Agreement and renewal, if any. Therefore, they had complied with this condition also.

- They have further argued that in the case of **G.S. Lamba & Sons, Secunderabad & Others (supra)**, the Hon'ble High Court had considered the following clause of the agreement.

Sl. No.	Clause of the agreement relied upon by the Hon'ble AP High Court in GS Lamba case (supra)	Comparable clauses in the present case
1.	GS Lamba shall maintain and provided a dedicated fleet of 5 vehicles to the lessee.	They maintained and provided a dedicated fleet of 45 ambient and reefer trucks for transportation of goods to M/s FCPL.
2.	GS Lamba shall make available the vehicles on 24/7 basis i.e., 24 hours and every day of the week.	The vehicles were made available to M/s FCPL for their exclusive use for all hours of the day for the period of Agreement.
3.	Drivers to be appointed by GS Lamba to the transferee for operation of the vehicle.	They were to provide adequate drivers and supervisors along with the vehicles for the operation of the vehicles to M/s FCPL.
4.	Customers shall ensure that all statutory clearances in respect of all vehicles like road tax, insurance, pollution compliance etc. are obtained.	In the instant case, they ensured that all statutory compliance in respect of the vehicles is undertaken by themselves.



The fact that the maintenance and repair of the vehicles and the insurance of the vehicles was to be borne by them does not in any way undermine the effective control and possession of M/s FCPL. Therefore, the transaction between them and M/s FCPL was purely a transfer of right to use the goods

and no element of STGU service was involved. The determinative clauses of the agreement highlighted the fact that effective control and possession over the vehicles was transferred to M/s FCPL, and M/s. FCPL alone had the right to use the specified number of vehicles deployed by them and even they could not trespass that right of the customer. During the period of agreement, they could not transfer the vehicles to any other party. Therefore, the Noticees have complied with this condition as well. Therefore, the allegation that the vehicles were under their control, was factually incorrect.

- They have stated that although they had provided drivers and supervisors along with the vehicles to M/s. FCPL, such operators were working only under the direction and control of M/s. FCPL. Hence, so long as the effective control over the vehicles remained with M/s. FCPL. Merely providing drivers, who were also under the direction and control of the customers, would not bring the transaction under the scope of Section 66E(f) of the Finance Act, 1994. They have place reliance on the decision of the tribunal /High Court in the case of:

- (i) Express Engineers and Spares Pvt. Ltd. v. Commissioner reported in 2022 (1) TMI 564 - CESTAT Allahabad,
- (ii) Gimmco Limited v. CCE & ST, Nagpur, 2017 (48) STR 476 (Tri-Mum.) and;
- (iii) Dipak Nath v. Oil and Natural Gas Corporation Ltd. and Ors. 2009 (11) TMI 834 - Gauhati High Court.

- They further argued that once the control and possession had been transferred to the customer, extension of any maintenance or repair work would not change the nature of the transaction. They have relied on the following decisions:

- (i) Petronet LNG Ltd. v. Commissioner of Service Tax, 2016 (46) STR 513(Tri-Del.)
- (ii) Dipak Nath v. Oil and Natural Gas Corporation and Ors. 2009 (11) TMI 834- Gauhati High Court
- (iii) Lindstrom Service India Pvt. Ltd. v. CCE & ST2020 (33) GSTL 391 (Tri Chan.)

- They have stated that the extended period of five years can be invoked only if service tax was not paid or levied by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of the Act or Rules, with intent to evade payment of service tax. They have filed returns from time to time and maintained books of accounts as required under the provisions of Finance Act, 1994. Therefore, suppression cannot be alleged by the Department. They had always co-operated with the

Department in their proceedings and had always provided the details asked for by the Department. Hence, the demand of service tax is completely time-barred and the impugned SCN is liable to be set aside.

- Without any deliberate intention to withhold/suppress information from the Department, invocation of extended period of limitation cannot be justified. In the present case, they have not committed any positive act to suppress information from the Department with the intention to evade payment of service tax. In this regard they have relied on the following decision/judgments:

- M/s Anand Nishikawa Co Ltd Vs Commissioner of Central Excise, Meerut reported at 2005-TIOL-118-SC-CX,
- Padmini Products Limited v CCE reported at 1989 (43) ELT 195 (SC)
- CCE v. Chemphar Drugs & Liniments 1989 (40) ELT 276 (SC)
- GopalZardaUdyog v. CCE 2005 (188) ELT 251 (SC)
- Lubri-Chem Industries Ltd. v. CCE 1994 (73) ELT 257 (SC)

- They have provided all the details as and when desired by the Department and they at no point of time had the intention to evade service tax or suppressed any fact wilfully from the knowledge of the Department. Further, they were and still, are of the bona fide belief that the service in question was excluded from the levy of service tax as per statutory provisions under the Finance Act, 1994. Therefore, no penalty is imposable on them. In this regard they have relied on the following decision/judgments:

- Suwvikram Plastex Pvt. Ltd. v. CCE, Bangalore - III 2008 (225) ELT 282 (T)
- Rallis India Ltd. v. CCE, Surat 2006 (201) ELT 429 (T)
- Patton Ltd. v. CCE, Kolkata- V 2006 (206) ELT 496 (T)
- CCE, Tirupati v. Satguru Engineering & Consultants Pvt. Ltd. 2006 (203) ELT 492 (T)
- Indian Hume Pipes Co. Ltd. v. CCE, Coimbatore 2004 (163) ELT 273 (T)
- Akbar Badruddin Jiwani v. Collector of Customs reported at 1990 (047) ELT 0161 (SC).

- Lastly, they requested to grant Personal hearing before deciding the subject SCN.



**Defence reply dated 15.02.2022:**

The have filed the present additional submissions/written submissions without prejudice to each other. They have requested to treat the submission as a part and parcel of the reply filed to the show cause notice.

- They had entered into agreements with M/s. FCPL for deploying fleet of ambient and reefer trucks and have provided transportation services to M/s. FCPL using these vehicles. They had also provided adequate drivers and supervisors with the vehicles as per the terms of the agreement. It was an undisputed fact that they were the owners of the ambient and reefer trucks which were being provided to M/s. FCPL. Further, it was also an undisputed fact that M/s. FCPL was engaged in the business of Transportation of Goods by Road Services (GTA Service). The relevant portion of the agreement dated 25.10.2012 in this regard is reproduced below for ease of reference:

**"RECITALS**

*(A) FCPL among other things is in the business of transportation of Goods by Road viz. Food, Fast Moving Consumer Goods (FMCG), Fruits and Vegetables (F&V), clothing and various general merchandise to the network of its client business locations. FCPL collects Goods from a number of distribution centers/suppliers and arranges its transportation to its client locations."*

- They have stated that the services provided by them to FCPL were falling under the SL No. 22 of Notification No. 25/2012-ST dated 20.06.2012. The ambient and reefer trucks were provided on hire basis to M/s. FCPL which was a goods transport agency. Thus, the services provided by them were exempt from service tax in terms of the SL No. 22 of Notification No. 25/2012-ST dated 20.06.2012.

**PERSONAL HEARING:**

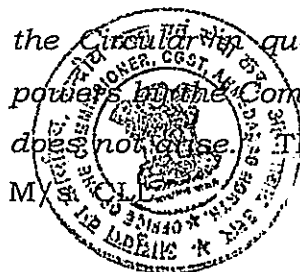
19. Personal hearing was granted to M/s. CLL vide letter dated 12.10.2021, but they did not respond to the letter. Thereafter, they were granted personal hearing vide letters dated 01.11.2021, 26.11.2021, however, they sought extension of time vide their letter dated 20.11.2021 and 13.12.2021 respectively. Therefore, they were again granted personal hearing vide letter dated 27.12.2021. Finally, Shri Ankit Parikh, CA, on behalf of M/s. CLL appeared for personal hearing on 15.03.2022. During the course of personal hearing he referred to their written submission tendered on 25.01.2022 and requested to decide the matter on merit.

**DISCUSSION AND FINDINGS:**



20. I have carefully gone through the facts of the case and records available in the case file, which include SCN, the defence replies dated 09.10.2020, 24.01.2022 and 15.02.2022, documents submitted, and oral submission made during the personal hearing held on 15.03.2022.

21. I also find that the M/s. CLL have contended that the circular No. 3/3/2017 dated 05.07.2017 as amended by Circular No.31/05/2018-GST dated 09.02.2018 is invalid and accordingly the SCN issued by any officer other than Commissioner in Board or the Joint Secretary posted in Board is not valid. The SCN issued by the Additional Director General of the DGGI is not valid and without jurisdiction. In support of their argument they had relied upon the decision of the Hon'ble Supreme Court in the case of M/s Canon India Private Limited - **2021 (3) TMI 384- SUPREME COURT**. In this regards, I find that the Board vide above mentioned circulars has assigned proper officers for provisions relating to CGST Act and Rules made there under. Further, I find that Board vide Notification No. 14/2017-CT dated 01.07.2017 has appointed the officers in the Directorate General of Goods and Services Tax Intelligence as central tax officers and invested them with all the powers under the Central Goods and Services Tax Act, 2017 and the Integrated Goods and Services Tax Act, 2017 and the rules made there under, throughout the territory of India, as are exercisable by the central tax officers of the corresponding rank as specified in column (3) of the said Table. Therefore, the DGGI officers being Central Tax Officers, are proper officer in relation to the function to be performed under the CGST Act as contemplated under Section 2(91), and as such I find that the SCN is valid in law. In this regard, I rely on the decision of the Hon'ble Gujarat High Court in Case No. C/SCA/7388/2021 dated 24.06.2021, in the case of "Yasho Industries Limited", wherein the court taking note of the decision of the Hon'ble Supreme court in the case of Canon India Pvt. Ltd, had observed that *"There could not be any disagreement to the proposition of law laid down by the Supreme Court in case of Canon India Pvt. Limited (supra) relied upon by the learned Advocate Mr.Rastogi that when a statute directs that the things to be done in a certain way, it must be done in that way alone. However, in the instant case, the Board has assigned the officers to perform the function as proper officers in relation to various Sections of CGST Act and the Rules made thereunder by issuing the Circular No. 3/3/2017, the question of issuing Notification for delegation of powers to the Commissioner as contemplated under Section 167 of the CGST Act does not arise.* Therefore, I find no substance in the arguments put forth by





22. I find that M/s. CLL have further contended that the SCN was to be adjudicated within one year from the date of issue of SCN, in terms of Section 73(4B) and in light of the decision of Hon'ble Delhi Court in the case of **Sunder System Pvt. Ltd. v. Union of India & Ors.** reported in **2020 (1) TMI 199-- Delhi High Court.** Agreeing with the observation of the Hon'ble Delhi High court, I also find that the court had observed at para 12 that *"In the present case, from the respondents' list of dates, it is apparent that it was certainly possible for the adjudicating authority to adjudicate upon the show cause notice issued to the petitioner within a period of one year at least from the conclusion of arguments on 3rd February, 2015, if not earlier"*. I find that M/s. CLL were granted personal hearings on various dates between from Oct 21 to Feb, 22, but they on their own accord had chosen to refrain from attending the personal hearing till 15.03.2022. The detailed defence replies also were filed by M/s. Chartered Logistics Ltd., only on 25.01.2022 and 15.02.2022, thereby delaying the proceedings for which they themselves are responsible. It is pertinent to mention here that the adjudication authority has tried its level best to hasten/ expedite the adjudication proceedings, however, the same cannot be said for the assessee as can be seen by the timing and sequence of their response after the issuance of the SCN.

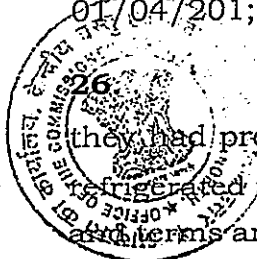
23. I observe that M/s. CLL have been issued the SCN dated 31.08.2020, by the Additional Director General, Ahmedabad Zonal Unit, Ahmedabad on the basis of the investigation carried out against M/s. CLL. The SCN dated 31.08.2020 proposes to classify the services provided i.e. Service of providing / deploying Trucks by M/s. CLL, under Declared Service of "transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods" under Section 66E(f) of the Finance Act, 1994. Therefore, SCN dated 31.08.2020 demands Service Tax of Rs. 4,16,81,579/- covering the period Oct 2014 to June 2017.

24. On going through the SCN, I find that basically the essence of the case is that the investigation by the DGGI Office was carried out against M/s. CLL. The investigation carried out revealed that M/s. CLL had entered into agreement with M/s. Fine Tech Corporation Pvt. Ltd. (M/s. FCPL) vide agreements dated 25.10.2012 and 25.10.2016 for supplying containerised / ambient vehicles to M/s. FCPL on dedicated basis for transportation of goods for which M/s. CLL had charged fixed cost and variable cost per month. It was observed from the terms and condition of the agreements that the possession and effective control of vehicles during the provision of service rested with M/s. CLL. The service provided by M/s. CLL did not fall within ambit of the negative.

list of service under Section 66D(p)(i)A of the Finance Act, 1994, as has been claimed by M/s. CLL. The SCN dated 31.08.2020 alleges that the service is liable to be classified under Declared Service of "transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods" under Section 66E(f) of the Finance Act, 1994. Therefore, the SCN dated 31.08.2020 proposing to classify the service under Declared Service as mentioned above and demanding service tax of Rs. 4,16,81,579/- was issued. Therefore, the issue for determination in the subject SCN dated 31.08.2020 before me is as to whether the service provided by M/s. CLL to M/s. FCPL is classifiable under Declared Service under Section 66E(f) of the Finance Act, 1994 or otherwise.

25. I find that M/s. CLL has contended that the services provided by them were in fact services by way of transportation of goods not as a Goods Transportation Agency, therefore, Service was exempted from levy of service tax. They also contended that the same fact was deposed during the recording of statement of Shri Lalit Gandhi. As per the agreement they had provided vehicle to M/S. FCPL and as per requirement of M/s. FCPL supplied the goods from their client's location to other location. They also contended that M/s. FCPL was preparing the LR and on the basis of such LR received from Fintech, Invoices were prepared for goods transported during the period based on trip sheet prepared by them. They have further contested that Transportation charges received by them were not limited to Vehicles as pointed out in the SCN/statement recorded for Amit Nanwani, but also for Services rendered for Transportation of other goods but the SCN had considered entire income from the said 45 vehicles. They have further, argued that if amount realised towards Fixed cost and variable cost from M/s. FCPL, the same are also covered under Sr. No. 22(b) of exemption notification No.25/2012 Dated 20/6/2012 and not liable for Service Tax. The Work Schedule II, has specifically mentioned that Road Truck operator shall render all services as transporter. Further, the para 7.14 supports their contention that the service provided by them were covered under services as Transportation of goods and covered under Negative list of Services vide Section 66D(p)(i) of finance Act in respect of Work order Dated 01/04/201; these facts have been overlooked in the SCN.

M/s. CLL vide letter dated 24.01.2022, have again contended that they had provided transportation services to M/s. FCPL by using ambient and refrigerated vehicles, had received consideration from M/s. FCPL as per the rate terms and the billing process specified in clauses III and IV of the agreement dated 25.10.2016. They were not issuing the consignment note. They had placed



their trucks at the disposal of M/s FCPL on time charter basis along with transfer of the right of possession and effective control over the same. They were to use the said vehicles as per instruction and orders of M/s. FCPL and they were not free to choose the route of the transportation. They had not issued any consignment note while transporting the goods on behalf of M/s FCPL. Thus, as they were not issuing any consignment note, they were not liable to be treated as Goods Transport Agency (GTA) as defined under Chapter V of the Finance Act, 1994, therefore, they were covered by the Negative List under Section 66D(p)(i) of the Finance Act, 1994 and their services were not liable to service tax. They had deployed the vehicles to M/s FCPL and had granted the right to use the vehicles, thus, they were not liable to pay service tax on the right to use the goods. The vehicles were transferred by them to M/s. FCPL for their use as per the agreement. They have further stated that once the vehicles were supplied to M/s. FCPL for their use, the rights as existing with them terminated when the vehicles were transferred and vested with M/s. FCPL. They do qualify the test for "transfer of right to use" as laid down by the Hon'ble Supreme Court in the case of M/s. BSNL. They stated that by bearing the responsibility of maintenance and repair of the vehicles and the insurance of the vehicles, does not undermine in any way the effective control and possession of M/s FCPL. Therefore, the transaction between them and M/s FCPL was purely a transfer of right to use the goods and no element of STGU service was involved

27. Therefore, in order to ascertain the exact nature of service provided by M/s. CLL, the terms and condition of the agreements entered by the parties need to be looked at. The relevant excerpts are reproduced for ready reference as under:

I *Scop of services :*

1. To provide transportation services using ambient and refrigerated vehicles as per Annexure 1 at FCPL DC/CPC locations for secondary (DC to Stores)/Local primary (Inter DC, CC to CPC)/ Regional transportation services.
2. For providing transportation services by you, FCPL shall from time to time instruct the Truck operator to increase/decrease the number of vehicle as per requirement of the DC.
3. To provide adequate supervision for smooth operations and to achieve service levels as defined later in KPI by FCPL.

III



1. That in consideration of FCPL paying to the TRUCK OPERATOR at the rates mentioned in Annexure 2 in this contract, TRUCK OPERATOR hereby agrees to transport the goods from FCPL's or its clients' sites to various locations mentioned in Annexure 1 or any other locations as specified by FCPL from time to time and bring return loads if required.

6. Applicable transportation charges for a vehicle for a month shall be derived as per total running during the month i.e. Fixed Cost+ Total Variable Cost+ unloading charges if applicable -Deductions & Penalty applicable due to non-compliance (like transit delay, Shortage/damages in Transit & Nonavailability/ Non-reporting, in-transit temperature losses beyond specified limit in case of Reefer operation).

9. The payments shall be made based on the number of vehicles engaged by the Truck operator for providing transportation services.

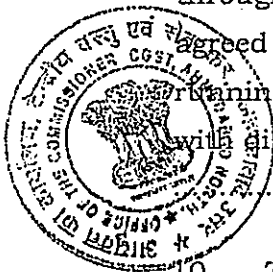
**V. Operation Rules**

1. Truck Operator shall strictly conform to the various instructions/SOP given from time to time by the authorities of FCPL, with regard to the safe and smooth transportation of materials as agreed to under this contract.

2. It is agreed that all the trucks and manpower deployed by the TRUCK OPERATOR covered by the agreement shall operate at the sole risk of the TRUCK OPERATOR. In no case, FCPL would be held responsible for any loss or damage done to the truck or manpower while on the FCPL's work or parked in their premises of FCPL or FCPL's principals.

3. TRUCK OPERATOR shall ensure availability of vehicles with complete supervision to manage the fleet for the purpose of providing transportation service.

5. TRUCK OPERATOR needs to ensure availability of adequate supervision through dedicated team of Key Account Manager/Supervisors & Coordinators as agreed in contracted terms (Annexure 2) at DCs, to ensure smooth and efficient running of vehicles, on time availability & reporting of drivers and vehicles in line with discussion with FCPL.



10. Truck Operator would be responsible for ensuring the availability of total number of vehicles with FCPL specifications on each day.

12. Besides the agreed count of vehicles, whenever required TRANSPORTER should arrange for extra vehicles from market as & when demanded by FCPL. The rates applicable to them would be agreed upfront and incorporated in the contract from time to time.

13. TRUCK OPERATOR shall be responsible for safe transportation & delivery of goods and for en-route pilferages. TRUCK OPERATOR to ensure all deliveries to be made with Proper acknowledgment as per FCPL guidelines.

**VII. Repair and Maintenance:**

2. Repair and Maintenance of the vehicle would solely be the responsibility of Truck Operator. Any vehicle breakdown. in transit needs to be handled by Truck Operator.

**IX. Penalties:**

**X. Insurance:**

**FCPL at its discretion may undertake insurance cover of material in transit.** However liability and responsibility of any damage due to negligence of the driver/ Truck Operator in transit will be recovered from the Truck Operator.

**Truck Operator's Insurance Responsibilities**

1. Truck Operator must have valid insurance for his vehicle in accordance with the prevailing law including that for third party and comprehensive cover for the drivers/ cleaners.

2. Truck Operator is also wholly responsible for any shortage, damage or pilferages of material in transit. All shortage/damage shall be recovered from Truck Operator as per clause IX.

**XI. Warranties**

3. Truck operator holds and will continue to hold throughout the continuation of the Agreement all necessary licences and authorities to perform the services as herein provided.

7. It is providing the transportation of goods by road services as per the terms set out in this agreement and it is not delivering/ giving any transfer of right to use of vehicles to FCPL.

**"GENERAL TERMS AND CONDITIONS" IN TERMS WORK ORDER TRPT-SC/2015-16 DATED 01/04/2015 BETWEEN M/S. CHARTERED LOGISTIC LIMITED AND M/S. FINE TECH CORPORATION PVT LTD.**

**Relevant Clauses General Terms and Conditions are as under:**

**2. Provision of Services.**

2.1 .....

.....

2.4 Road Truck Operator shall obtain, keep valid and subsisting, and comply with the conditions of, all permits, licenses, authorizations and consents as may be required from time to time in respect of and in relation to the performance of its obligations hereunder ("Applicable Permits")

**Schedule II**

**Scope of Work**

**1. Vehicles**

1.1 Road Truck Operator shall

i, at its own cost and expense deploy adequate number of Vehicles for provision of Services as per terms of this Agreement

.....

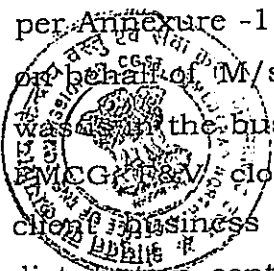
v. Ensure that Vehicles are at all times available to perform multi pick up/deliveries as and when required and advised by Company through its authorised representatives,

vi. Ensure that each Vehicle have adequate drivers allocated to the Vehicles for 24 hours operation

**2. Personnel**

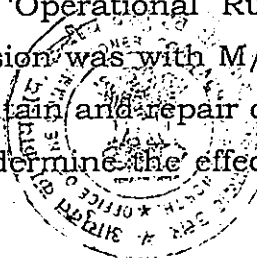
2.1 Road Truck Operator shall at its sole cost and expense deploy adequate personnel, sufficiently trained and qualified, fully competent, medically fit and equipped for providing services diligently and efficiently in accordance with the terms thereof. If company is of the opinion that additional personnel are required for effective and efficient provision of services, Road Truck Operator shall at its cost and expense employ such additional personnel as may be recommended by company

28. On perusing the above terms and conditions; it is forthcoming that M/s. CLL owned or possessed fleet of trucks, and were to supply the trucks as per Annexure -1 along with drivers and supervisors to FCPL and carrying out, on behalf of M/s.FCPL services of transportation of goods by road. M/s. FCPL was engaged in the business of **transportation of Goods by Road**, including Food, clothing and various general merchandise to the network of its client business locations. M/s. FCPL collects Goods from a number of distribution centres / suppliers and arranges its transportation to its client



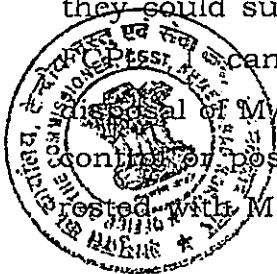
locations. Further, as per the agreement, M/s. CLL was to be paid the consideration at the rates mentioned in Annexure-2 in the contract. Accordingly, I find that M/s. CLL was to receive consideration at fixed rates per vehicle (fixed Cost + variable Cost per KM of Running of Vehicle). The determinative factor for consideration was the number of vehicle supplied/deployed by M/s. CLL. The consideration was not to be determined with reference to the consignment loaded in the vehicles. Further, bill for the service was to be raised by M/s. CLL on monthly basis. It is also an admitted fact that M/s. FCPL was issuing the LR / consignment notes in respect of goods being transported using the vehicles supplied by M/s. CLL. M/s. CLL was not issuing the LR or Consignment note. Thus, I find that the transportation of goods was provided by M/s. FCPL using the vehicles provided by M/s. CLL. I therefore find that the essence of agreement was for deployment of a certain number of vehicles by CLL and such vehicles were to be used for transportation of goods on the directions and advise of and on behalf of FCPL. I find that the consideration received by M/s. CLL from M/s. FCPL was for supply of vehicles as per Annexure-1 of the contract. Thus, the activity of transportation of goods was actually undertaken by FCPL who were in the business of transportation of goods by road and this activity was being performed by CLL, not on own account to their own clients (consigner or consignee) but on behalf and directions of FCPL. I therefore find that the M/s. CLL has not provided service of transportation of goods by road to M/s. FCPL, but they have provided the service of Supply of Vehicles to M/s. FCPL. I therefore, find that the service provided by M/s. CLL is not covered under the Negative List of Service at Sr.no.66D (p)(i)(A) as has been claimed by M/s. CLL. In view of the above factual and documentary evidence available on records, I find that the claim of M/s. CLL that service provided by them was covered under Negative List of service under section 66D (p)(i)(A) of the Finance Act, 1994, is not tenable and is unsustainable in law.

29. I find that M/s. CLL also argued that the vehicles, which were tangible goods were transferred by them to M/s. FCPL for their use as per the agreement. By transferring the vehicles, the rights that existed over it were terminated and were vested with FCPL. In this regard, the vehicles supplied by them could not be used by them for any activity other than those specified in the agreement. Further, they argued that they did not have the discretion to choose the route for movement of the trucks as specified in Para 22 of Clause V of the 'Operational Rules' of the said contract. The effective control and possession was with M/s. FCPL. They have also contended that responsibility to maintain and repair of the vehicles and providing drivers / supervision does not undermine the effective control or possession over vehicle by M/s. FCPL.



Therefore, they have contested that the transaction between them and M/s FCPL was purely a transfer of right to use the goods and no element of Supply of tangible for use service was involved. They have also argued that they have also complied with the test of "Transfer of right to use the goods" as laid down by the Supreme Court in the case of M/s. BSNL as reported at **2006 (2) S.T.R. 161 (S.C.)**

**30.** In this regard, from the perusal of the agreements, work order and as discussed hereinabove, I find that M/s. CLL after deployment of vehicle at disposal of M/s. FCPL, were responsible for many activities which was to be carried out in connection with transportation of goods. The deployment of vehicle was to be made with driver for each vehicle. Further, I also find that as per terms and condition provided under "Operational Rules", they were supposed to comply with the various instructions/SOP given from time to time by the authorities of FCPL, with regard to the safe and smooth transportation of materials as agreed upon by them. M/s. CLL was to operate the trucks and manpower deployed by them at their sole risk and M/s. FCPL was not be held responsible for any loss or damage done to the truck or manpower while on the FCPL's work or parked in the premises of FCPL or FCPL's principals. They were to supervise and manage the fleet for smooth transportation and delivery of the goods, they were also responsible for any enroute loss or theft of goods. Further, I find that M/s. CLL was liable to penalty for delay in transport, not holding permission/licence and even for poor behaviour by staff/drivers; these were the responsibility of M/s. CLL. I find from Para 7 under Clause "Warranties" of the agreement dated 25.10.2012, that the terms set out in the agreements, **was not for delivering/ giving any transfer of right to use of vehicles to FCPL.** I further find from para 2.4 (Provision of service) as contained in Work Order dated 01.04.2015, that it was the responsibility of M/s. CLL that they would obtain, keep valid and subsisting, and comply with the conditions of, all permits, licenses, authorizations and consents as required from time to time in respect of and in relation to the performance of their obligations hereunder ("Applicable Permits"). From the above factual and documentary evidence available on records, as also from the statement of Shri Lalit Gandhi, recorded under Section 14 of Central Excise Act 1944 read with Section 83 of the Finance Act, 1994, wherein he replied in affirmative when asked Question No. 20, as to whether they could supply goods of other company after unloading the goods of M/s. **can** I can infer that though M/s. CLL has deployed the vehicles at the disposal of M/s. FCPL or allowed them to be used by M/s. FCPL, the effective control or possession over the vehicles so deployed by M/s. CLL was always **rested** with M/s. CLL only. I find that the Supreme Court in the case of M/s.



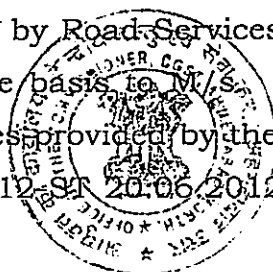


Bharat Sanchar Nigam Limited v. Union of India, reported in 2006 (2) S.T.R. 161 (S.C.), has laid down the following criteria to determine whether a transaction involves transfer of the right to use goods, namely, -

- a. There must be goods available for delivery;
- b. There must be a consensus ad idem as to the identity of the goods;
- c. The transferee should have a legal right to use the goods-consequently all legal consequences of such use including any permissions or licenses required therefor should be available to the transferee;
- d. For the period during which the transferee has such legal right, it has to be the exclusion to the transferor this is the necessary concomitant of the plain language of the statute - viz. a "transfer of the right to use" and not merely a licence to use the goods;
- e. Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same rights to others.

31. From the above observations, it is clear that, M/s. CLL has not transferred any legal right to use the goods or any permission or licence to M/s. FCPL. During the period of agreement, the vehicles were to be in possession of the drivers of the vehicle who were the employee of M/s. CLL. There appears no exclusion of right of M/s. CLL having deployed the vehicle to M/s. FCPL. Further, I find that there is a specific mention in Para 7 under Clause "Warranties" of the agreement dated 25.10.2012, **that the agreements, was not for delivering/ giving any transfer of right to use of vehicles to M/s. FCPL**, which clearly establishes that there is no transfer of right to use goods involved in the transaction. Therefore, I find that the criteria laid down by the Hon'ble Supreme Court are not satisfied. Hence, I do not find any force in the arguments tendered by M/s. CLL that "the right to use goods" was transferred to M/s. FCPL. I therefor find the service provided by M/s. CLL to M/s. FCPL is classifiable under the declared service of "transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods" as defined under Section 66E(f) of the Finance Act, 1994. In view of the above, I also find that the decision of Tribunal / Courts relied upon by M/s. CLL are not applicable to the facts and circumstances specific to that case.

32. M/s. CLL vide their letter dated 15.02.2022 have filed an additional reply and requested to take the same on record without prejudice to their earlier written submissions made by them. M/s. CLL have stated that it is an undisputed fact that M/s. FCPL was engaged in business of transportation of Goods by Road Services and they had provided the ambient and reefer trucks on hire basis to M/s. FCPL. I find that they have basically argued that the services provided by them was to be covered under Sr. No. 22(b) of Notification 25/2012, dt. 20.06.2012, thus they were liable to exemption from payment of



service tax. I also find that M/s. CLL had tendered the same argument in their defence reply dated 09.10.2020.

**33.** For ease of reference, the Sr. No. 22 of the Notification No. 25/2012-ST dated is reproduced as follows:

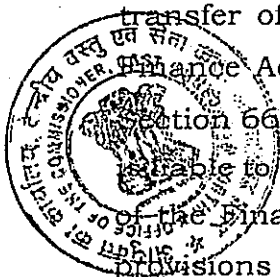
*"22. Service by way of giving hire-*

- (a) *to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or*
- (b) *to a goods transport agency, a means of transport of goods."*

Thus, it is seen that if GTA hires a means of transportation, no service tax is payable on transaction.

**34.** From the above definition it is amply clear that the recipient of the service needs to be Goods Transport Agency for becoming or availing the benefit under Sr. No. 22(b) of Notification No. 25/2012-ST dated 20.06.2012. I find that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be has to be construed strictly. In this regard, I rely on decision of the Supreme Court in the matter of Commissioner of C.Ex., New Delhi vs. Hari Chand Shri Gopal, reported in [2010(260)ELT3(SC)]. In the instant case, M/s. CLL has not provided any concrete evidence to substantiate their claim. In absence of such evidences, it can not be concluded that the service was provided to GTA. Therefore, I am unable to concur with the arguments tendered by M/s. CLL the same being not supported by any substantial evidence.

**35.** In view of the above discussion, submission made by M/s. CLL, and documentary documents available on records, I find that the service provided by M/s. CLL is correctly and appropriately covered under the Declared Service of "transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods" as defined under Section 66E(f) of the Finance Act, 1994. Therefore, the demand under the subject SCN to classify the service under Declared service is justified. I therefore hold that the service provided by M/s. CLL is liable to be classified under declared service of "transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods" as defined under Section 66E(f) of the Finance Act, 1994 and also hold that the benefit of exemption availed under Section 66D(p)(i) of Finance Act, 1994 is not available to them. Thus, M/s. CLL is liable to pay service tax of Rs. 4,16,81,579/- under the proviso to Section 73(1) of the Finance Act, 1944 as proposed in the subject SCN. I also find that the provisions of Section 75 of the Finance Act, 1944 mandates that any person who



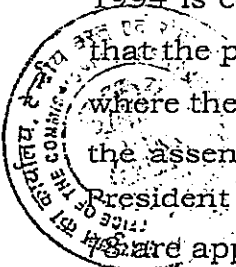
is liable to pay service tax, shall, in addition to the tax, be liable to pay interest at the appropriate rate. I, thus hold that the assessee is also liable to pay the interest on Service Tax of Rs. 4,16,81,579/-.

**36.** From the above facts and discussion, I find that M/s. CLL has contravened that provision of (i) Section 67 of the Finance Act, 1994 in as much as they had failed to determine the correct taxable value of taxable service and declared the same to the department (ii) Section 68 of the Finance Act, 1994 and Rule 6 of the Service Tax Rules, 1994, as amended, in as much as they had failed to pay the service tax on the taxable services provided to M/s. FCPL by them (iii) Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 in as much as they had failed to furnish correct and proper periodical returns in form ST-3 mentioning the particulars of the aforesaid taxable service provided by them, correct value of taxable service provided and other particulars in the manner as provided therein.

**37.** From the facts and discussion aforementioned, I find in the instant case that M/s CLL had suppressed their actual nature of services provided by way of transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods by misdeclaring it as services falling under negative list with an intent to evade payment of tax and failed to disclose the above details in their ST-3 Returns during the aforesaid period. Thus, they had suppressed the material facts from the Department by not disclosing the value of such service in their ST-3 Returns. Therefore, I find that M/s. CLL had intentionally suppressed such facts so as not to bring their activities to the notice of the Department, though they were registered for providing various taxable services, as discussed earlier. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax payers' behaviour. The responsibility of the tax payer to voluntarily make information disclosures is much greater in a system of self-assessment. The omission or commission on the part of M/s CLL has clearly demonstrated the intention of M/s. CLL to evade payment of service tax, though they being well aware of the unambiguous provisions of the erstwhile Finance Act, 1994 and Rules made there under, have failed to disclose to the department at any point of time, regarding the claiming of exemption and non-payment of service tax on amounts recovered by them, during the period from October, 2014 to June, 2017. M/s. CLL had deliberately not shown actual value of service rendered by them in their ST-3 Returns and tax involved thereon with intent to evade the Proper payment of service tax. These facts would not have come to light if the

investigation was not conducted by DGGI officers. Moreover, the government has from the very beginning placed full trust on the assessee, accordingly measures like self assessment etc. based on mutual trust and confidence are in place. Further, the assessee is not required to maintain any statutory or separate records under the Excise / service tax law as considerable amount of trust is placed on the assessee and private records maintained by them for normal business purposes are accepted for purpose of excise law. Moreover, returns are also filed online without any supporting documents. All these operate on the basic and fundamental premise of honesty of the assessee; therefore, the governing statutory provisions create an absolute liability on the assessee when any provisions is contravened or there is breach of trust placed on them. Such contravention on the part of the assessee tantamounts to willful misstatement and suppression of facts with an intent to evade the payment of the duty/ tax. It is evident that such facts of contravention and short/non paying the service tax by short declaring /under reporting taxable value of the service provided, as discussed earlier, on the part of the assessee came to the notice of the department only when the DGGI had initiated the investigation. In the case of *Mahavir Plastics versus CCE Mumbai, 2010 (255) ELT 241*, it has been held that if facts are gathered by department in subsequent investigation extended period can be invoked. In *2009 (23) STT 275, in case of Lalit Enterprises vs. CST Chennai*, it is held that extended period can be invoked when department comes to know of service charges received by appellant on verification of his accounts. Therefore, I find that all essential ingredients exist in this case to invoke the extended period under proviso to Section 73(1) of the Finance Act, 1944 by invoking the extended period of time of 5 years, and the service tax amounting to Rs 4,16,81,579/- (S. Tax of Rs.4,02,89,125/-+ Edu. Cess of Rs. 2,59,887/-+ S.H. Edu. Cess of 1,29,944/-+ S. B. Cess of Rs. 6,10,647/-+ KKC of Rs. 3,91,976/-) is required to be recovered along with applicable interest under Section 75 of the Finance Act, 1994. And for the same reasons, all ingredient for imposing penalty under Section 78 exists, therefore M/s. CLL is also liable for penal action under the provisions of Section 78 of the Finance Act, 1994.

**38.** As far as the imposition of penalty under Sec. 76 of the Finance Act, 1994 is concerned, I find that Section 78B of the Finance Act, 1994 stipulates that the provisions of the amended Section 76 and 78 will be applicable in cases where the order is passed after the date on which the Finance Bill, 2015 receives the assent of the President. The Finance Bill, 2015 received the assent of the President on 14.05.2015. Therefore, the amended provisions of Section 76 and 78 are applicable in the present case.



39. In view of the above, the penalty under Sec. 76 is imposable only in cases where the non-payment/ short-payment of service tax is on account of reasons other than fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made there-under with the intent to evade payment of service tax. In the instant case, as I have already discussed hereinabove, the non-payment/ short-payment of service tax is on account of suppression of facts and contravention of the provisions of law with an intent to evade payment of service tax and as such the provisions of Sec. 76 of the Finance Act, 1994 will not be applicable to the 'facts of the present case and no penalty can be imposed under Sec. 76 of the Finance Act, 1994.

40. As regards the proposal for imposition of penalty under Section 77(1)(b), I find that M/s. CLL has failed to keep, maintain or retain books of account and other documents as required in accordance with the provision of Act and Rules made thereunder. Thus, the assessee have rendered themselves liable to penalty under Section 77(1)(b) of the Finance Act, 1944.

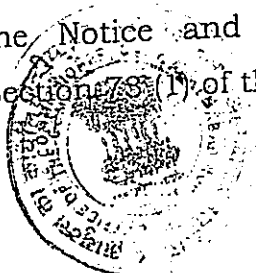
In view of the above discussion and findings, I pass the following order:

**ORDER**

(a) I order to deny the benefit of exemption availed by M/s. CLL under Section 66D(p)(i) of Finance Act, 1994;

(b) I order to classify the service of deployment and mobilization of vehicles to their service receiver as "declared services" of "transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods", as specified under Section 66E(f) of the Act;

(c) I order to demand Service Tax amounting to Rs 4,16,81,579/- (S. Tax of Rs.4,02,89,125/-+ Edu. Cess of Rs. 2,59,887/-+ S.H. Edu. Cess of 1,29,944/-+ S. B. Cess of Rs. 6,10,647/-+ KKC of Rs. 3,91,976/-) (Rupees Four Crore, Sixteen lakhs, Eighty-One Thousand, Five hundred and Seventy Nine only), not paid during the period from 01.10.2014 to 30.06.2017, as shown in Annexure-A to the Notice and order to recover the same from M/s. CLL under proviso to Section 73(1) of the Act;

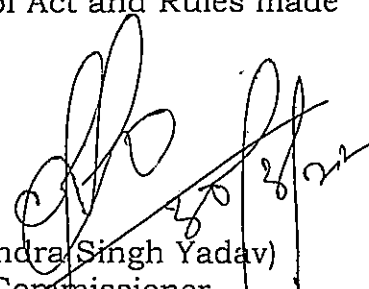


(d) I order to charge Interest at the applicable rates on the amount of service tax payable on the amount, as mentioned in (c) above, from M/s. CLL under the provisions of Section 75 of the Act;

(e) I impose penalty of Rs. 4,16,81,579/- (Rupees Four Crore, Sixteen lakhs, Eighty-One Thousand, Five hundred and Seventy Nine only) on M/s. CLL under Section 78 of the Act, for non-payment of service tax by deliberate and willful misstatement, suppression of facts and contravention of provisions of the said Act and the rules made there under as discussed above with an intent to evade payment of service tax; and I refrain from imposing penalty on M/s. CLL under Section 76 of the Act.

However, in view of clause (ii) of the second proviso to Section 78 (1), if the amount of Service Tax confirmed and interest thereon is paid within period of thirty days from the date of receipt of this Order, the penalty shall be twenty five percent of the said amount, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days.

(f) I impose penalty of Rs. 10,000/- on M/s. CLL under Section 77(1)(b) of the Act for having failed to keep, maintain or retain books of account and other documents as required in accordance with the provision of Act and Rules made thereunder.

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

Date: .03.2022.

**By Regd. Post AD./Hand Delivery**  
**F. No. STC/15-29/OA/2020**

To  
M/s. Chartered Logistics Ltd.,  
C-1, Jay Tower, Ankur Commercial Centre,  
Naranpura, Ahmedabad-380013

Copy to:

- 1 The Principal Chief Commissioner of CGST & C. Ex., Ahmedabad Zone.
- 2 The Additional Director General, DGGI, Ahmedabad Zonal Unit, Ahmedabad
- 3 The Assistant/Deputy Commissioner, CGST & C. Ex., Division-VII, Ahmedabad North.
- 4 The Superintendent, Range-IV, Division-VII, Ahmedabad North.
- 5 The Superintendent (System), CGST, Ahmedabad North for uploading on website.
- 6 Guard File.

