
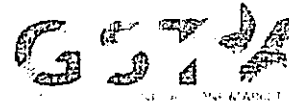


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद – उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर/ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- oaahmedabad2@gmail.com</p>

निबन्धित पावती डाक द्वारा/By R.P.A.D
फा.सं./F.No. GST/15-62/OA/2022

DIN-20230964WT00006656DA

आदेश की तारीख/Date of Order: - 08.09.2023
जारी करने की तारीख/Date of Issue :- 08.09.2023

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

सयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 31/JC/ LD /GST/2023-24

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।
This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति में 90 दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद-380015 को प्रारूप GST-APL-01 में दाखिल कर सकता है। इस अपील पर रू. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form GST-APL-01 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within three months from the date of its communication. The appeal should bear a court fee stamp of Rs. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त (अपील) के समक्ष नियमानुसार पूर्व जमा के धनराशी का प्रमाण देना आवश्यक है।

An appeal against this order shall lie before the Commissioner (Appeal) on giving proof of payment of pre deposit as per rules.

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या GST-APL-01 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केंद्रीय जी. एस. टी. नियमावली, 2017 के नियम 108 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(5) उक्त अपील की प्रति।

(6) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू. 5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form GST-APL-01 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 108 of CGST Rules, 2017. It should be accompanied with the following:

(1) Copy of accompanied Appeal.

(2) Copies of the decision or, one of which at least shall be certified copy, the order

Appealed against OR the other order which must bear a court fee stamp of Rs.5.00.

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. GADT/TECH/SCN/GST/33/2021-TECH&LGL-O/o COMMR-CGST-ADT-AHMEDABAD dated 28.03.2023 issued to M/s Agarwal Fuel Corporation Pvt.Ltd., 202, 2nd Floor, Anmol Business Centre, Opp. Nildeep Tower, Darpan Six Road, Navrangpura, Ahmedabad-380014.





BRIEF FACTS OF THE CASE

M/s. Agarwal Fuel Corporation Pvt. Ltd., having their Principal Place of Business at 202, 2nd floor, Anmol Business Centre, Opp. Nildeep Tower, Darpan Six Road, Navrangpura, Ahmedabad - 380 014, holding Goods and Service Tax Identification No:- 24AAACE3916A1ZD, (herein after referred as 'the said taxpayer' for the sake of brevity), is engaged in the import of coal and its trading activities and for supply of taxable goods and services.

2. The audit of the records of the said taxpayer was conducted for the period from July 2017 to March 2019 and subsequently Final Audit Report No. GST-103/2021-22 dated 24.08.2021 is issued to the said taxpayer, in the said Final Audit Report one Revenue Para was raised regarding non-payment of IGST towards transport of goods in a vessel including service provided or agreed to be provided by a person located in non taxable territory to a person located in taxable territory by way of transportation of goods by a vessel from a place outside India up to the Customs station of clearance in India in terms of Sr.no. 9 of Notification No. 8/2017-Integrated Tax (Rate) dated 28.06.2017 read with Sr.no.10 of Notification No. 10/2017- Integrated Tax (Rate) dated 28.06.2017 and corrigendum thereto. Accordingly, it appeared that the said taxpayer/importers is liable to pay IGST @ 5% on 10% of CIF value of the imported goods.

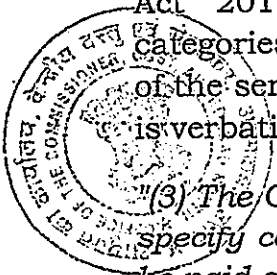
3. During the scrutiny of documents relating to expenses made by the said taxpayer and their other accounts & returns, it was noticed that they had imported coal on CIF basis as well as on FOB basis under various Bills of Entry during the audit period i.e. from July'2017 to March'2019. The said taxpayer appears not to have discharged IGST liability towards transport of goods in a vessel including service provided or agreed to be provided by a person located in non taxable territory to a person located in taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India under reverse charge mechanism. The IGST payable is 2 detailed in the attached Annexure-A to the Show Cause Notice.

4. The proviso to Section 5(1) of the integrated Goods and Services Act' 2017 (CGST Act') reads as under:

"Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962"

5. Section 5(3) of the IGST Act' 2017 and Section 9(3) of the COST Act' 2017 empowers the Government to issue a notification for specific categories of supply of services where the IGST would be paid by the recipient of the services. The text of sub-section (3) of Section 5 of IGST Act' 2017, which is verbatim to Section 9(3) of CGST Act' 2017 is reproduced as follows

(3) The Government may, on the recommendations of the Council by notification, specify categories of supply of goods or services or both' the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the



person liable for paying the tax in relation to the supply of such goods or services or both."

6. Notification No 10/2017-integrated Tax (Rate) of 28.6.2017 notifies certain categories of supply of services where the IGST is to be paid by the recipient of such services. The relevant text to the notification is reproduced below:

Sl. No.	Category of Supply of service	Supplier of services	Recipient of service
10	Services supplied by a person located in non- taxable territory by way of territory transportation of goods by a vessel from a place outside India up to the , customs station of clearance in India	A person located in non taxable territory	importer, as in clause section 2 the Customs 1962(52 of 1962), located in taxable territory

7. It was noticed that the taxpayer had imported Coal under various Bills of Entry as mentioned in the Annexure-A to the Show Cause Notice. The services have been received on account of transportation of goods by a vessel from a place outside India and from a person who is located in the non-taxable territory. Accordingly, in terms of Sr. No. 10 to the Notification No 10/2017-integrated Tax (Rate) of 28.6.2017, the taxpayer, being the importer, appears to be liable to pay Integrated Goods and Service Tax as a recipient of the services.

8. The rate of tax prescribed at Sr. No 9(li) to the Notification No 8/2017-IGST (Rate) of 28.6.2017 on the services received by the supplier is 5% adv. A corrigendum dated 30.06.2017 was issued to Notification No 8/2017-IGST (Rate) of 28.6.2017, inserting the following:

"4. Where the value of taxable service provided by a person located in non-taxable territory to a person located in taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India is not available with the person liable for paying integrated tax, the same shall be deemed to be 10 % of the GIF value (sum of cost, Insurance and freight) of imported goods".

9. It appeared that in some cases the actual freight value is available and in other cases where the actual freight value is not available, in those cases, the value of freight deemed to be 10% of the GIF Value of the imported goods in terms of above corrigendum.

10. From the above, it was noticed that the supplier had to pay IGST on recipient basis on actual freight value and in case actual freight value is not available then the freight value to be taken as 10% of the CIF value for the services received by them from a person located in the non-taxable territory in relation to the transportation of goods by a vessel from a place outside India.

The objection was conveyed to the taxpayer. The taxpayer their letter dated 29.07.2021 has stated that they have already discharged IGST on BoE on Import of goods where such amount already formed part of the valuation of goods. Since, the IGST is already paid, therefore levy of IGST on Ocean freight under RCM Is double taxation. Further they cited Hon'ble Gujarat High Court order In the case of M/s. Mohit Minerals Pvt. Ltd. wherein

it was held that IGST Is not leviable on ocean freight paid on import. The taxpayer has further submitted that they have also filed a Writ Petition No.19382 in the same matter and the matter is under process before Hon'ble High Court of Madhya Pradesh.

12. Section 39 of the CGST Act' 2017 read with Section 20 of the IGST Act' 2017 lays down that every registered person should file a return giving details of the outward supply made by them, inward supply received by them including the ITC available with them. Section 39 of the CGST Act' 2017 reads as under:

"39. (1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed, on or before the twentieth day of the month succeeding such calendar month or part thereof.

(2) to (6) ...

Provided that any extension of time limit notified by the Commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner.

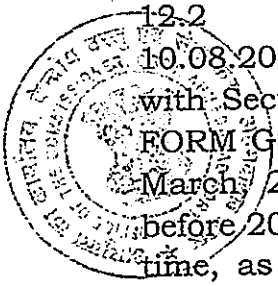
(7) Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub-section (3) or sub section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return.

(8) Every registered person who Is required to furnish a return under sub-section (1) or sub-section (2) shall furnish a return for every tax period whether or not any supplies of goods or services or both have been made during such tax period.

12.1 Rule 61 of the CGST Rules, 2017 as amended reads as:

61, Form and manner of submission of monthly return.-(i) Every registered person other than a person referred to in section 14 of the Integrated Goods and Services Tax Act' 2017 or an Input Service Distributor or a non-resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under section 52 shall furnish a return specified under sub-section (1) of section 39 in FORM GSTR-3 electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

12.2 Further, vide Notification No. 34/2018-Central Tax dated 10.08.2018, issued under sub-rule (5) of Rule 61 of the CGST Rules' 2017 read with Section 168 of the CGST Act' 2017 (12 of 2017) specified the return in FORM GSTR-3B of the said rules for each of the month from August' 2017 to March 2019 shall be furnished electronically through common portal on or before 20th day of the month succeeding such month as extended from time to time, as the case may be. Similar provisions made applicable to IGST vide Section 20 of the IGST Act' 2017.



12.3 From conjoint reading of Section 39 of CGST Act' 2017 read with Rule 61 of the CGST Rules' 2017 & Section 20 of IGST Act' 2017, It appears that the said taxpayer should have filed GSTR-3/GSTR-3B for the period In dispute, before 20 th day of the month of succeeding month/amended date from time to time, however it appears that they have failed to file the correct stipulated GSTR-3B, in as much as they have not shown the value of the service used for transportation of goods in a vessel from non-taxable territory and also not shown their tax liability on such taxable value under Reverse Charge Mechanism

12.4. Section 49 of the CGST Act' 2017 provides for payment of tax read with Section 20 of the IGST Act' 2017:

"49. (1) Every deposit made towards tax, interest, penalty, fee or any other amount by a person by Internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained such manner as may be prescribed.

(2)...

(3) The amount available in the electronic cash ledger may be used for making any payment towards tax. Interest, penalty, fees or any other amount payable under the provisions of this Act or the Rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.

4. The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.

5

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7. All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register in such manner as may be prescribed. 8. Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely; a. self-assessed tax, and other dues related to returns of previous tax period; b. self-assessed tax, and other dues related to the return of the current tax period; c. any other amount payable under this Act or the rules made thereunder including the demand determined under section 73 or section 74.

12.5. It appeared that the said taxpayer knowingly failed to pay the tax on the ocean freight on reverse charge basis in gross contravention of Section 49 of the CGST Act' 2017 read with Rule 85 and 87 of the CGST Rules' 2017 & and Section 20 of IGST Act'2017& Rules of the IGST Rules'2017.

12.6. Interest on delayed payment as detailed und 50 of the CGST Act 2017 is as under:

"50. (1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent, as may be notified by the Government on the recommendations of the Council. [Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished

after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.]

(2) -

(3) -

Further, similar provisions exist in Section 50 of the GGST Act' 2017 & Section 20 of the IGST Act' 2017:

12.7 It was found that the said taxpayer knowingly failed to file correct GSTR-3/GSTR-3B in time and thereby failed to pay the IGST amount in time and on which now they appear to be liable to pay the interest on unpaid amount of IGST as applicable under Section 50(1) of the CGST Act' 2017 read with Section 20 of the IGST Act' 2017.

12.8. Provisions relating to determination of tax as defined under Section 74 of the CGST Act' 2017 read with Section 20 of the IGST Act' 2017 are as under:

"74. (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized by reason of fraud, or any willful misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

2. to (7)....

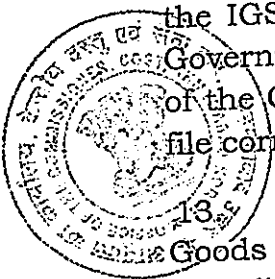
(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

12.9. Provisions relating to general penalty are contained in Section 125 of the CGST Act' 2017 read with Section 20 of the IGST Act' 2017, which read as under:

"Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to twenty-five thousand rupees."

12.10 it appears that the said taxpayer is liable to pay penalty as applicable under section 74(1) of the CGST Act' 2017 read with section 20 of the IGST Act' 2017, for non payment of IGST on reverse charge basis to the Government exchequer. They also appear liable for penalty under Section 125 of the CGST Act 2017 read with Section 20 of the IGST Act 2017 for failure to file correct periodical returns.

The scheme of Central Goods and Services Tax Act' 2017, Gujarat Goods and Service Tax Act'2017 and IGST Act' 2017 rests on voluntary compliance by the taxpayer entrusted with the responsibility to pay the GST.



The onus to determine facts and Issues relevant to the correct ascertainment and discharge of GST levy remains with the supplier of taxable goods or service or both, If such facts on the basis of which an Independent and proper evaluation can be made Is kept away from the department due to an act of omission or commission by the taxpayer responsible to pay the tax, would constitute a situation where the first proviso to section 74 of the CGST Act, 2017 read with section 74 of the GGST Act'2017 & section 20 of the IGST Act' 2017 appears invocable.

14. First proviso to section 74 of the CGST Act 2017 states "Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where Input tax credit has been wrongly availed or utilised by reason of

1. fraud, or
2. any wilful-misstatement or
3. suppression of facts to evade tax,

he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice."

14.1. Thus, in the CGST Act' 2017 read with GGST Act' 2017 and IGST Act' 2017, the use of the word 'or' after each of the expressions fraud, any willful mis-statement, suppression of facts to evade tax implies that the presence of any one of the elements along with the intention to suppress is enough to invoke and sustain the invocation of the first provision of section 74.

14.2. Further, "Explanation 2" to Section 74 of the CGST Act' 2017 read with Section 74 of the GGST Act' 2017 & Section 20 of the IGST Act' 2017 has defined suppression as under:

"Explanation 2.--For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer".

15. The said taxpayer had an obligation to comply with the statutory provisions of CGST Act' 2017 read with GGST Act' 2017 & IGST Act' 2017 and to furnish the information as required there under:-

It appeared that in terms of Section 39 of CGST Act' 2017 read with Rule 61 of the CGST Rules' 2017 & read with Notification Nos. No. 16/2018-CT dated 23.03.2018, No. 23/2018-CT dated 18.05.2018, No. 34/2018-CT dated 10.08.2018, No. 35/2018-CT dated 21.08.2018, No. 55/2018-CT dated 21.10.2018 and 09/2019-CT dated 20.02.2019 & similar provisions of IGST Act' 2017, the said taxpayer were required to file correct returns showing the value of the service used for transportation of goods in a vessel from non-

taxable territory and also showing their tax liability on such taxable value under Reverse Charge Mechanism in GSTR-3B within stipulated date.

ii) It appeared that in terms of Section 59 of the CGST Act' 2017 read with Section 20 of IGST Act' 2017, the said taxpayer was required to self assess the taxes payable under IGST Act' 2017 and furnish a return for each tax period as specified under section 39.

iii) It appeared that in terms of Section 49 of the CGST Act'2017 read with Section 20 of the IGST Act' 2017, the said taxpayer was required to pay the tax by debiting its electronic cash ledger.

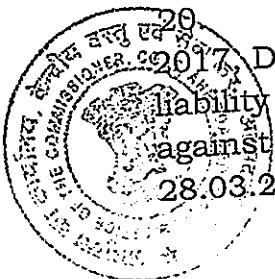
16. From the facts narrated above the said taxpayer appeared to have suppressed the facts, by non-compliance of the obligations cast upon them by the statutory provisions. It is Imperative to mention here that intent is a state of mind which can only be inferred from the actions or their lack thereof.

17. Therefore, it appeared that the said taxpayer has willfully suppressed the above facts with an Intent to evade payment of IGST on reverse charge basis. Hence, as envisaged under Section 74(1) of CGST Act' 2017 read with Section 20 of the IGST Act' 2017, the demand of IGST as quantified in the subsequent para, appears to be made on the taxpayer alongwith applicable interest and penalty.

18. It was noticed that the taxpayer has contravened the provisions of-
Proviso to Section 5(1) of the IGST Act read with the provisions of Section 5(3) of the IGST Act and Sr. No 10 to Notification No 10/2m 7 Integrated Tax (Rate) of 28.6.2017 as they have failed to pay IGST on reverse charge basis to the Government account within the prescribed due dates

19. It appeared that the taxpayer had not paid the tax within the prescribed due dates on the services received by them from a person located in the non-taxable territory in relation to the transportation of goods by a vessel from outside India. The receipt of the services has not been shown in their GSTR 3B returns. It, therefore, appeared that there is a case of suppression of facts with an intent to evade the payment of tax. It appeared that IGST amounting to Rs.3,71,01,527/- is to be demanded from M/s. Agarwal Fuel Corporation Pvt. Ltd under the provisions of Section 74(1) of the CGST Act 2017 read with the provisions of Section 20 of the IGST Act 2017, It appeared that the taxpayer would also be liable to pay interest on the non-payment of IGST under the provisions of Section 50(1) of the CGST Act 2017 read with the provisions of Section 20 of the IGST Act 2017. It appeared that the taxpayer have suppressed the facts with an intent to evade the payment of tax, as stated above. Accordingly, they also appeared to be liable for penal action under the provisions of Section 74(1) of the CGST Act'2017 read with the provisions of Section 20 of the IGST Act'2017.

In terms of the provisions of Rule 142(1A) of the CGST Rules, DRC-OIA was issued to the said taxpayer on 11.03.2022 intimating their liability under Section 74(5) of the CGST Act, 2017 or to file any submissions against the above ascertainment in Part-B of DRC-OIA on or before 28.03.2022.



20.1 The said tax payer vide DRC-OIA Part B dated 25.03.2022 received by this office on 28.03.2022 has inter alia stated that the ascertained liability is not acceptable to them ; that they have already discharged IGST through filing bill of entry at the Customs port at the time of import of goods where such freight amount already formed part of valuation of goods ; that paying IGST on ocean freight on RCM basis will amount to double taxation ; that they have placed reliance on the judgment dated 23.01.2020 of the Honorable Gujarat High Court in the case of M/s.Mohit Minerals and that they have also filed Writ Petition No.19382 of 2017 in the Honorable Madhya Pradesh High Court on the' same issue which is pending decision.

20.2 With reference to said Mohit Mineral's case the Honorable Gujarat High Court in the case of Mohit Minerals is appealed against by the department before the Honorable Apex Court and the same is pending.

21. Therefore Show Cause Notice No.GADT/TECH/SCN/GST/33/2021-TECH&LGL-O/O COMMR-CGST-ADT-AHMEDBAD dated 28.03.2022 was issued to M/s.Agarwal Fuel Corporation P.Ltd called upon to show as to why:

- i. non-payment of Integrated Goods and service tax (IGST) amounting to Rs..3,71,01,527/- (Rupees Three Crore Seventy One Lakhs One thousand five hundred twenty Seven only) towards transport of goods in a vessel including service provided or agreed to be provided by a person located in non taxable territory to a person located in taxable territory by way of transportation of goods person by a vessel from a place outside to the customs station of clearance in India in terms of Notification No. 8/2017-Interated Tax (Rate) dated 28.06.2017 read with Notification No. 10/2017- (Rate) dated 28.06.2017 should not be demanded from them under the provisions of Section 74(1) of the CGST Act, 2017 read with the provisions of Section 20 of the IGST Act 2017.
- ii. Interest should not be charged on the tax mentioned at (i) above them under the provisions of Section 50(1) of the CGST Act'2017 read with the provisions of Section 20 of the IGST Act, 2017.
- iii. Penalty should not be Imposed on them, under the provisions of Section 74(1) of the CGST Act, 2017 read with Section 20 of the IGST Act'2017 on the proposed demand of tax at (i) above;
- iv. penalty should not be imposed on them under the provisions of Section 125 of the CGST Act' 2017 read with Section 20 of the IGST Act' 2017 for not filing the correct periodical returns.

DEFENCE REPLY

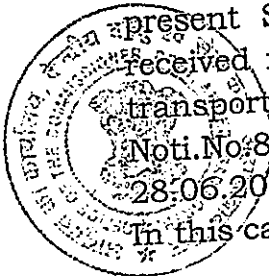
The said tax payer vide letter dated 28.04.2022 & 11.08.2023 submitted their reply to SCN wherein they stated that they are engaged mainly in import and sale of coal under HSN code Heading 2701. They stated that the allegation/contention made in the SCN are erroneous and without any basis. They have paid discharged IGST on subject Bill of Entry at the time of imports on the purchase price. The freight amount was part of the value of the goods and thus the IGST stands paid on the freight amount also. Since the freight portion in imported value of goods is already part of value on which IGST stands paid, hence levy of IGST on ocean freight once again under RCM is

double taxation. The judicial decisions have been always in favour of an interpretation disallowing double taxation if two interpretations are possible. In support of their argument, they replied upon the decision of Hon'ble apex court in the case Federation of Hotel and Restaurant Association of India Vs.UOI and Hon'ble High Court of Madras's order in the case of Indian Institute of Architects Vs UOI.

23. They further stated that the issue is settled by the judgement in of Hon'ble High Court of Gujarat in the case Mohit Minerals in SCA No.11410 of 2019 vide order dated 23.01.2020 wherein the Hon'ble HC held that IGST is not leviable on ocean freight paid on imports. In the assessee's case the freight is part of value on which IGST was paid and hence there is no reason to demand IGST. The said tax payer further submitted that they have also filed a writ petition No.19382/2017 before the Madhya Pradesh High Court and therefore they may not be insisted to pay the demand. They further stated that the Department has filed appeal against the Hon'be Gujarat High Court's Order before the Hon'ble Supreme Court and is pending for disposal. They further stated that the present SCN is issued raising demand under Section 74 IGSTT Act, 2017. But in the SCN there is no allegation that the demand is raised due to suppression or willfull statement and therefore the SCN is required to be quashed.

24. The said tax payer vide their letter dated 09.08.2023 further stated that the IGST in the present case has been demanded on the services received on account of transportation of goods by a vessel from a place outside India and from a person who located in the non taxable territory. However, the MP High Court vide tax payer's writ petition No.19382 of 2017 by order dated 30.01.2023 has held that "the petitioner is not liable to pay IGST on ocean freight for services supplied by a person located in non taxable territory by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India". Hence Department is bound by the said order and therefore no IGST could be levied hence the SCN is liable to be dropped. Further the Hon'ble Gujarat High Court in the case of Mohit Minerals P.Ltd also held that no tax is leviable under the IGST Act, 2017, on the ocean freight for the services provided by a person located in non taxable territory by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India and levy and collection of such tax ocean freight under the impugned Notifications is not permissible in law. Against the said judgement, the Hon'ble SC has dismissed the appeal filed by the Union of India by judgement dated 19.05.2022 vide UOI V Mohit Minearls P. Ltd 2022 (61) GSTL 257(SC). Therefore, SCN alleging non payment of IGST of Rs.3,71,01,527/- on the services received from a person located in the non taxable territory in relation to the transportation of goods by a vessel from outside India is not sustainable in law.

25. The said tax payer further stated that the Department in the present SCN has alleged non payment of Rs.3,71,01,527 on the services received from a person located in the non taxable territory in relation to the transportation of goods by a vessel from outside India, in terms of Noti.No.8/2017 dated 28.06.2017 read with Noti.No.10/2017 dated 28.06.2017 and recovery of the same under Section 74 (1) of CGST Act, 2017. In this case the aforesaid IGST has been demanded on the basis of the above



mentioned two Notifications which is clear from the averments made in the various paras on the present SCN. However Hon'ble M.P.High Court, in the tax payer's writ Petition ordered to quash the said two Notifications as being ultra virus. That the Department is bound by the said order and therefore no GST could be levied hence present SCN is liable to be dropped. Because SCN dated 28.03.2022 is contrary to law laid down by the jurisdictional High Court and deliberately disobeyed the mandate of the Hon'ble Gujarat High Court. They have provided copies of Hon'ble High Courts of Gujarat and Madhya Pradesh and also of Hon'ble apex court in support of their claim.

26. They further contended that the SCN is issued as a result of FAR , however the audit itself was without jurisdiction and without authority of law, hence SCN based on the same is also illegal and not sustainable in law. They further stated that the allegation of suppression of facts are wrong and denied as it is admitted facts, the tax payer filed petition before the Hon'ble MP High court which was intimated by letter dated 29.07.2021. Therefore the tax payer was not paying IGST on the said ocean freight. It was a question of interpretation of law and validity of Notifications and matter was in litigation hence it cannot be suppression of facts and therefore no demand can be made under Section 74 of the Act. Accordingly they are also not liable to pay any penalty under Section 74 as well as Section 125 of the Act therefore the SCN is required to be quashed.

PERSONAL HEARING

27. In the instant case, Personal Hearing was held on 04.09.2023. Shri Pradeep Upadhyay, Senior Vice President, Accounts appeared for P.H on behalf of the tax payer. He reiterated their written submissions dated 28.04.2022 & 09.08.2023 and requested to decide the SCN on merits.

DISCUSSION AND FINDINGS

28. I have carefully gone through the Show Cause Notice, reply to SCN, copies orders of Hon'ble High Court of Gujarat and Hon'ble High court of M.P., and Hon'ble Apex Court and other submissions made by the assessee during the course of P.H.

29. On perusal of the above documents and submissions, I find that the issue to be decided is as to whether the said tax payer is liable to pay IGST amounting to Rs. 3,71,01,527/- towards ocean freight i.e.charges of transport of goods in a vessel including service provided or to be provided by a person located in non taxable territory to a person located in taxable territory by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India under RCM during the period from July 2017 to May 2019 along with interest and penalty.

In the instant case, I find that audit was conducted for the period July 2017 to March 2019 and subsequently FAR No.GST-103/2021-22 dated 24.08.2021 was issued to the said tax payer. During the scrutiny of documents relating to expenses made by the said taxpayer and their other accounts & returns, it was noticed that they had imported coal under various

34. In this connection, I refer the relevant portion of the said order of the Hon'ble High Court of Gujarat which is as under:

"254. In view of the aforesaid discussion, we have reached to the conclusion that no tax is leviable under the integrated Goods and Service Tax Act 2007, on the ocean freight for the services provided by a person located in a non taxable territory by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance and the levy and collection of tax of such ocean freight under the impugned Notification is not permissible in law.

255. In the result, this writ application along with all other connected writ application is allowed. The impugned Notification No.8/2017-integrated tax (rate) dated 28.06.2017 and Entry 10 of Notification No.10/2017-integrated Tax(Rate) dated 28th June 2017 are declared as ultra virus the Integrated Goods and Services Act, 2017 as they lack legislative competence. Both the Notification are hereby declared to be unconstitutional. Civil application, if any, stands disposed of"

35. On perusal of the findings of the said order, I find that the Hon'ble Gujarat High Court has declared the Notifications No. No.8/2017-integrated tax (rate) dated 28.06.2017 and Entry 10 of Notification No.10/2017-integrated Tax(Rate) dated 28th June 2017 as ultra virus. Accordingly the issue of taxability on the ocean freight has been decided by the Hon'ble court in favour of the assessee by declaring same as not taxable. As the Hon'ble court declared the Notifications No. No.8/2017-integrated tax (rate) dated 28.06.2017 and Entry 10 of Notification No.10/2017-integrated Tax(Rate) dated 28th June 2017 as ultra virus, no demand based on these Notifications will not be valid and sustainable.

36. I have also gone through the SCN and other documents submitted by the tax payer and find that the in the Para 20.2 of the SCN it was mentioned that the order of the Hon'ble High Court of Gujarat in the case of Mohit Minerals is appealed against by Department before the Hon'ble Apex Court. On perusal of the documents, I find that the Hon'ble Supreme Court vide its order dated 19.05.2022 decided the issue in favour of the assessee agreeing with the order of the Gujarat High Court. In this connection, I have gone through the findings of the Hon'ble Apex court and find that the Hon'ble apex court has fully agreed with the Hon'ble Gujarat High Court's following observation:

"146. The High Court in the impugned judgement has observed that :

"what has led to the present day problems in the implementation of GST:

132. The IGST is implemented by subsuming various indirect taxes. The difficulty which is being experienced today in proper implementation is the GST is because of erroneous misconception of law, or rather, erroneous assumption on the part of the delegated legislation, that service tax is an independent levy, as it was prior to the GST and it go vivisect the transaction and supply to levy more taxes on certain components completely overlooking or forgetting the basic concept of composite supply introduced in the GST legislation and the every idea of levying the GST. Prima facie, , it appears that while issuing the impugned Notification, the delegated legislature had in mind the provisions of Finance Act, 1994, rather than keeping in mind the object of bringing the GST by making the

constitutional (101)st amendment Act, 2016 to merge all taxes levied on the Goods and Services to one tax known as the GST.

133. It appears that despite having levied and collected the integrated tax under the IGST Act, 2017 on import of goods on the entire value which includes the ocean freight through the impugned Notifications, once again the integrated tax is being levied under an erroneous misconception of law that separate tax can be levied on the services components (freight), which is otherwise impermissible under the scheme of the IGST legislation made under the CA Act, 2016

134. All the learned Senior Counsel are right in their submission that if such an erroneous impression is not corrected and if such a trend continues, then in future even the other components of supply of goods, such as insurance, packaging, loading/unloading, labour etc may also be artificially vivisected by the delegated legislation to once again levy the GST on the supply on which the tax is already collected.

Xx

215. Thus having [aid the IGST on the amount of freight which is included in the value of imported goods, the impugned Notification levying tax again as a supply of service, without any express sanction by the statute, are illegal and liable to be struck down”

147. We are in agreement with the High Court to the extent that a tax on the supply of a service, which has already been included by the legislation as a tax on the composite supply of goods, cannot be allowed.

148. Based on the above discussion, we have reached the following condition:

(i) ...

(ii) ...

(iii) ...

(iv) ...

(v) The impugned levy imposed on the service aspect of the transaction is in violation of the principle of composite supply enshrined under section 2(30) read with Section 8 of the CGST Act. Since the Indian importer is liable to pay IGST on the composite supply comprising of supply of goods and supply of services of transportation, insurance etc. in a CIF contract, a separate levy on the Indian importer of the supply of services by the shipping line would be in violation of Section 8 of the CGST Act.

For the reasons stated above, the appeals are accordingly dismissed.”



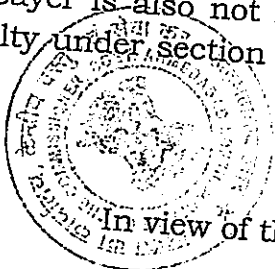
On perusal of the above findings of the Hon'ble Apex Court, I find that the question of taxability of IGST on ocean freight is decided in favour of the assessee on the grounds mentioned above and accordingly the appeal filed by the Department in the case of M/s. Mohit Minerals P.Ltd was disposed of in

favour of the assessee. In this connection, I have also gone through the order of the Hon'ble Gujarat High Court and find that the impugned Notification No.8/2017-integrated tax (rate) dated 28.06.2017 and Entry 10 of Notification No.10/2017- integrated Tax(Rate) dated 28th June 2017 are declared as ultra virus as they lack legislative competence and declared both the Notifications are to be unconstitutional. The Hon'ble Apex Court also agreed with the above findings of the Hon'ble Gujarat High Court by dismissing the Department Appeal filed against the said order of Hon'ble Gujarat High Court. Further Central Board of Indirect Taxes and Customs, Legal Cell vide letter of F.No.275/11/2022-CX.8A letter dated 04.11.2022, it was informed that the Board has decided not to file a review petition in the subject matter.

38. Moreover, I also find that the said tax payer in their submissions dated 09.08.2023 stated that their petition before the Hon'ble M.P. High Court was also decided by order dated 30.01.2023, by referring to the judgement in the case of UOI Vs Mohit Minerals P. Ltd 2022 SCC online SC 657, wherein it is held that *"keeping in view of the aforesaid judgement, the petitioner is not liable to pay IGST on occasion freight for services supplied by a person located in non taxable territory by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India. In view of the above, the impugned Notification No.8/2017-integrated tax (rate) dated 28 th June and entry 10 of the Notification 10/2017 integrated Tax (Rate) dated 28.06.2017 are quashed being ultra virus"*. The tax payer has also submitted copy of the said order of Hon'ble Madhya Pradesh High Court.

39. In this connection, I have gone through the orders of the Gujarat High Court, MP High Court and Apex court and find that the issue involved in the instant SCN is covered in all these decisions. According to which it was concluded that no IGST is payable on ocean freight for services supplied by a person located in non taxable territory by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India. Further it was also ordered to quash the Notification No.8/2017-integrated tax (rate) dated 28 th June and entry 10 of the Notification 10/2017 integrated Tax (Rate) dated 28.06.2017 being ultra virus. As these Apex Court and other courts have decided the matter in favour of the assessee that they are not liable to pay any IGST on ocean freight and the Notification itself is quashed, the demand of IGST on the tax payer has no merit. Therefore I have no option but to accept the contention of the tax payer to drop the Show Cause Notice on the basis of the above said orders of various Hon'ble Courts. In view of the above facts and findings, I find that the Show Cause Notice dated 28.03.2022 issued to the tax payer i.e. M/s. Agarwal Fuel Corporation P. Ltd for demand and recovery of IGST of Rs.3,71,01,527/- is not sustainable and accordingly liable to be set aside. As the demand itself is not sustainable, the tax payer is also not liable to pay any interest u/s.50 of CGST Act, 2017 or penalty under section 74(1) or 125 of the CGST, Act, 2017 as proposed in the SCN.

40.



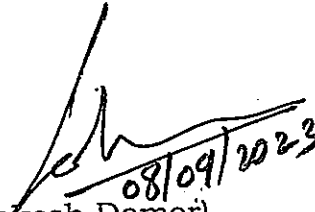
In view of the above facts, I pass the following order.

ORDER

41. I hereby order to drop proceedings initiated for demand and recovery of IGST of Rs.3,71,01,527/- along with interest and penalties against M/s. Agarwal Fuel Corporation P.Ltd vide SCN No. No.GADT/TECH/SCN/GST/33/2021-TECH&LGL-O/O COMMR-CGST-ADT-AHMEDBAD dated 28.03.2022

42. Accordingly the Show Cause Notice No. No.GADT/TECH/SCN/GST/33/2021-TECH&LGL-O/O COMMR-CGST-ADT-AHMEDBAD dated 28.03.2022 is disposed off.




(Lokesh Damor)
Joint Commissioner
Central GST & CE,
Ahmedabad North

F.NO.GST/15-02/OA/2022

DT.

By speed post/hand delivery

To,
M/s. Agarwal Fuel Corporation Pvt. Ltd.,
202, 2nd floor, Anmol Business Centre,
Opp. Nildeep Tower, Darpan Six Road,
Navrangpura, Ahmedabad - 380 014,

Copy to:

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The DC/AC, Central GST & Central Excise, Div- VII Ahmedabad North.
3. The Superintendent, Range-I, Division-VII, Central GST & Central Excise, Ahmedabad North with a request to upload the OIO electronically in terms of DSR advisory No.01/2018 dated 26.10.2018 of the ADG, Systems & Data Management, Bengaluru.
- ✓ 4. The Superintendent (System), Central GST & Central Excise Ahmedabad North for uploading the order on website.
5. Guard File.

