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

F.No:- STC/04-60/OA/Central Bank/2017-18

आदेश की तारीख़/Date of Order : - 18.12.2020
जारी करने की तारीख़/Date of Issue :- 18.12.2020

DIN No.-20201264WT000000EA8F

द्वारा पारित/Passed by:- एम. एल. मीणा / *M.L.Meena*
अपर आयुक्त / Additional *Commissioner*

मूल आदेश संख्या / Order-In-Original No. 28/ADC/2020-21/MLM

जिस व्यक्ति (यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती हैI
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 विरूद्ध अपील ,इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी ,अहमदाबाद 380015–को प्रारूप संख्या इ.ए–1 (E.A.–1) में दाखिल कर सकता है। इस अपील पर रू .2.00 (दो रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 2.00 only.

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

An appeal against this order shall lie before the Commissioner (Appeal) 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)

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या इ.ए.–1 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(65) उक्त अपील की प्रति।

(66) निर्णय की प्रतियाँ अथवा जिस आदेश के विरूद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू) 2.00 .दो रूपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(65) Copy of accompanied Appeal.

(66) 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.2.00.

विषय:- कारण बताओ सूचना/Show Cause Notice No. **18/BhZU/ADG/ST/2018 dated 12.03.2018** issued against M/s.Central Bank of India, Central Bank Building, Plot No.205, Lal Darwaja, Ahmedabad.

Brief Facts of the case:

M/s. Central Bank of India, Zonal Office, Central Bank Building, Post No.205, Lal Darwaja, Ahmedabad (hereinafter referred to as noticee) holding Service tax registration No.AAACC2498PSDIP3 are engaged in providing Banking and other Financial Services.

2. Intelligence was gathered by the officers of Directorate General of Central Excise Intelligence, Regional Unit, Indore (now Directorate General of GST Intelligence) that the Noticee were not discharging Service Tax liability under reverse charge mechanism on the Services received for processing of export documents and realization of proceeds from the Bank/Financial institutions located in nontaxable territory. Therefore enquiry was initiated against them by way of summons.

3. The Noticee was providing services to their customers for processing of export documents and remittance of export proceeds. For this purpose they availed services of their counterpart Foreign Banks located in non taxable territory. In turn foreign banks recovered amount towards services provided to the Noticee bank. The foreign bank deduct/recover the consideration for services so provided from the respective export proceeds realized and remit only remaining amount to the Indian Bank. As per Rule 3 of Place of Provision of Service Rules, 2012 the location of service receiver is the place of provision of service therefore liability to pay Service tax in such circumstances, would be on the Service recipient bank in India under reverse charge mechanism under Notification 30/2012-ST dated 20.6.2012.

4. It appeared that an amount of **Rs. 5,85,98,593/-** was recovered/deducted by the Foreign Bank on account of the Services provided to the Noticee. Since the Service provider is located in non taxable territory, Service Tax amounting to **Rs. 76,22,909/-** is recoverable from the Noticee under Section 73 of the Finance Act 1994 under reverse charge mechanism.

5. In compliance to summons dated 13.10.2016 Shri Deepak Kumar Verma, Manager, Central Bank of India, Zonal Office, Bhopal DGCEI appeared on 25.10.2016 to tender statement on behalf of the Noticee. In his statement Shri Deepak Kumar Verma, recorded under section 14 of the Central Excise Act, 1944 read with section 83 of the Finance Act, 1994 interalia stated that:-

(i) The transactions for collection of export realisation through foreign bank, Export documents were received from the exporters which include Bill of Lading, Shipping Bill, Invoice and bill of exchange. This Bill of Exchange is in the name of the Exporter and mentions the amount in foreign currency to be collected from the foreign Buyer through the buyer's foreign Bank. After this, the Bill of Exchange is endorsed in the name of the foreign bank. The document set is then sent to the buyer's foreign bank for collection. The foreign bank on receiving the documents collects the payment from the buyer and releases the documents to the buyer. Then the foreign bank remits the funds to the Noticee after deducting its charges. They in turn credit the export proceeds to the account of the exporter in Indian rupees. The Indian bank charges the exporter in INR for the services rendered to the exporter on which the bank pays the due taxes. The Indian bank merely acts as a collecting agent for the exporter. The foreign bank charges are

on the account of the exporter and not on account of the Indian Bank.

(ii) On enquiry whether service tax is being discharged on the amount deducted/recovered by the foreign Banks towards processing of Export documents he stated that the charges collected by the foreign banks in relation to the processing of Export Documents are on account of the exporter. The foreign bank collects the proceeds from the foreign customers and after deducting their due charges, foreign bank remits the proceeds to the Indian Bank. The Indian Bank credits these proceeds after converting to INR to the account of the exporter. Thus the proceeds as well as the charges are the property/liability of the exporter. The Indian Bank collects its charges for the services rendered to the exporter separately and discharges the due tax liabilities thereon. Without prejudice to the above they submitted that in case of export transactions the recipient of service is either the exporter who is liable to pay the tax on foreign bank charges. Since there is no privity of contract between the Indian banks and the Foreign banks acts on accounts, instructions of the client.

(iii) On enquiry as to how Export documents are processed he averred that in respect of Export documents the customers contingent account is credited with the equivalent INR Amount on the date of the transaction i.e. the date of forwarding the export documents and the banks nominal account for Export Bills sent on collection is debited in the books of Accounts on the face of the Balance Sheet in Contingent Liabilities in notes in accounts. On the date the export proceeds are received, a contra entry is passed for reversing the original entry passed along with the credit of export proceeds along with the charges applicable to the account of the exporter.

6. On being asked to submit the details of import/export transactions made by the Bank, the Central Bank of India, Mid Corporate Branch, Indore vide letter No. MCB/AGM/2016-17/360 dated 2.2.2017 submitted the details of their branches in Zones situated in M.P., Chattisgarh and Gujarat dealing in import and export transactions and copies of Zone-wise Service Tax registration certificates of Bhopal, Ahmedabad and Raipur Zones. The Bank has also submitted a list of addresses of premises in Form ST-2 (Centralized) issued by Central Excise Department to M/s Central Bank of India, Ahmedabad Zonal Office having Registration No. AAACC2498PSDIP3. The Noticee submitted that the import/export transactions are being made only through their MCB Baroda, Race Course Branch, Baroda, MCB Surat, Surat Main Office, Jamnagar Main Office, Rajkot Main Office and Lal Darwaja Branch, Ahmedabad included in the above registration.

7. The Noticee submitted/forwarded the data on export transactions i.e. the foreign bank charges recovered (deducted/charged) by the foreign banks against processing of import/export documents and remittance of foreign currency in respect of import/export documents processed by Banks w. e. f. October 2012 to March 2017 vide letters dated 1.2.2018 and dated 22.11.2017.

8. While going through the sample import-export documents submitted by the Bank vide letter No. MCB/Forex/2017-18/794 dated 7.9.2017 it was noticed that they are affixing stamps on documents stating that the said transaction of forwarding of documents and realisation of proceeds by way of remittances of money are subject to URC 522/UCP 600 (hereinafter also referred to as 'protocols'). The banks in India appeared to be following URC 522/UCP 600 for

transaction, for forwarding of documents and realisation of proceeds by way of remittances of money.

9. In order to understand the obligations of the foreign banks, the banks in India and importer/exporter, the said URC 522/UCP 600 were examined Articles No. 4, 8, 10, 11, 16, 21, 26 of URC 522 and articles No. 3, 4, 7, 8, 9, 13, 17 of UCP 600, read with other relevant Articles in these two protocols are relevant for the present issue. A reading of these protocols shows that there is an arrangement between banks in India and foreign banks, whereby, the foreign bank recognizes only the Bank in India for providing their services and for collection of their charges. In case of any clarification on any issue regarding their activity, there is always correspondence between the foreign bank and the bank in India. Even the amount of charges collected by foreign bank is informed only to the bank in India. The exporter or the importer in India comes to know about these charges through their own bank in India. In fact, the importer or the exporter in India is not even aware of the quantum of charges which are charged by the foreign bank. Further, in case of export transactions, if the remittance could not be paid by the foreign importer, in that case the foreign bank recovers the charges from banks in India only and in case of import transactions, if the foreign exporter does not bear the foreign bank charges, the same are recovered by the foreign bank from the bank in India. The combined reading of the relevant articles in the said two internationally accepted protocols, undoubtedly show that services are provided by the foreign bank to the bank in India.

10. It appeared that, when Banks subscribe to the statements of protocols or rules of conduct and follow the UCP 600 and the URC 522, they are able to create uniformity in the processes and procedures followed while transacting, without having to enter into formal contracts. The foreign bank does not recognize the Indian exporter/ importer and does not provide any services at his request. The foreign Bank does provide such service to the Banks in India and the UCP 600 the URC 522 are following by both transacting.

11. This is further buttressed by the fact that RBI has made it mandatory for all AD Category-I banks to adhere to the provisions of the UCP 600 while opening letter of credit for import into India on behalf of their constituents and thus these are in the nature of mandatory regulations to be followed by Indian Banks and so the same will prevail. Therefore, in cases where the foreign banks are recovering certain charges for processing of import/export documents regarding remittances of foreign currency, the banks in India are recipient of service. Therefore, as per the Service Tax law, as recipients of service, the bank in India, is required to pay Service Tax under the provisions of Notification no. 30/2012- Service Tax dated 20.6.2012.

12. The Noticee is a Bank in India, who are providing services to their customers who are exporters. The transactions undertaken by the Bank in India for Indian customers in case of exports is forwarding of documents and realisation of proceeds by way of receiving remittance in foreign currency. For this activity, the banks in India have to obtain and utilise the services of foreign banks. It was explained by the Banks that there is no written agreement between banks in India and foreign banks for providing the said services. In a typical case of export from India,

the exporter submits the documents to a bank in India and the said bank in turn forwards these documents to a foreign country. The said banker of the importer and/ or the bank in the foreign country charges certain amounts. These charges are recovered by them by deducting from the total amount to be remitted to the Indian Bank. It was informed that since there is no formal agreement between the banks in India and foreign banks regarding the scopes of their activity or the quantum of charges etc., all banks around the world, who transact in Import and export transactions, subscribe to the "Uniform Rules for Collection of Commercial Paper, International Chamber of Commerce Brochure No. 522". (URC 522) effective from 01.01.1995/ "Uniform Customs and practice for Documentary Credits" (UCP 600), both issued by International Chamber of Commerce, effective from 1.7.2007, which provide Articles containing terms and conditions which are binding on all the parties subscribing to them. Thus, the need for agreements between banks is immaterial, so long as they subscribe to the URC 522 and UCP 6000, only the rates of charges need to be periodically fixed. The UCP 600 itself in the Foreword states "The objective, since attained, was to create a set of contracted rules that would establish uniformity in that practice" and the fact that these are Contractual Rules is reiterated in its Articles, The URC 522 also specifies that they are Rules and states that they are of binding nature, in Article 1 and 4. As per Article 21, the collecting banks(s) shall be entitled to recover disbursements, expenses and charges from the bank from which the collection instruction was received , and the remaining bank shall be entitled to recover promptly from the principle any amount so paid out by it, together with its own disbursements, expenses and charges.

13. The views of the banks that, services provided by the foreign banker received by the exporter in India, do not appear to be factually and legally correct because, for a person to be treated as recipient of service, it is necessary that he should know who the service provider is, as they are not aware of the identity of the foreign banks which would be providing services. Exporter in India does not have any formal or informal agreement with the foreign bank. Exporter in India does not even know the quantum of charges which the foreign bank would be recovering. Therefore, in view of the above mentioned factual position and also in view of various articles of URC 522/ UCP 600, it is clear that services are provided by the foreign bank to the bank in India.

14. In the present case, the Noticee is involved in the provision of service of remittance of export proceeds, follow the URC 522 and UPC 600, therefore there is no reason why the URS 522 and the UCP 600 being protocols of conduct (rules) should not be considered as contract since all the ingredients required to constitute a contract, in one form or another, are present. Article 1 of UCP 600 states "The Uniforms Customs and Practice for Documentary Credit, 2007 Revision, ICC Publication no. 600 ("UCP") are rules that apply to any documentary credit ("credit") (including, to the extent to which they may be applicable, any standby letter of credit) when the text of the credit expressly indicates that it is subject to these rules. They are binding on all parties thereto unless expressly modified or excluded by the credit". Similarly Article 1 a of URC 522 states "The Uniform Rules for Collections, 1995 Revision, ICC Publication No. 522, shall apply to all collections as defined in Article 2 where such rules are incorporated in to the

text of the "collection instruction" referred to in Article 4 and are binding on all parties thereto unless otherwise expressly agreed or contrary to the provisions of a national, state or local law and/ or regulation which cannot be departed from". From the above, the binding nature of URC-522 and UCP 600, once the concerned parties subscribe to the same for a transaction (be they importer, exporter, Banks in India, foreign banks) is clear.

15. The fact that banks in India act as an agent of their clients (importer /exporter) shows that they are providing services to the said clients which are liable to service tax and the value on which the said service tax is to be discharged is the sum total of the Bank's own charges and the expenses incurred by it in providing the said service. Apparently, it is not true that there is no Principal relationship between the Banks in India and the counterpart foreign banks and the UCP 600 and URC 522 are evidence of the same. The services provided by the foreign banks are availed by the banks in India for their own consumption since it would not be possible to provide the service of realisation of proceeds of exports without availing the services of foreign banks. It is also apparently true that it is a case of one service to the Indian exporters in which both banks in India and foreign banks provide their respective part of the service and that the ultimate service is consumed and utilized by the exporters in India who also pays for the same. It also appeared that while their clients/ customers, exporters in India are aware of the fact that the Indian bank is obtaining the services of a foreign bank, they may not be aware of the identity of the foreign banks(s) and that while they are aware that charges would be collected by the foreign bank, the actual quantum of charges would become known to the exporters in India through their Bank. It is not correct that the ultimate service recipients, the exporter, are the person responsible to pay the tax under Reverse Charge Mechanism. It is an undisputed fact that there is value addition in the services provided by the Indian banks, when the expenses incurred by way of Foreign Bank Charges need to be added to their own charges in terms of Service Tax (Determination of value) Rules in the hands of the Indian banks and so there will be service tax liable to be paid in the hands of Indian banks under Reverse Charges Mechanism.

16. A typical, hypothetical instance of an illustrative and sequential detailing transaction flow in respect of export of goods/ service by exporter is as under:

- An Indian Exporter approaches an Indian bank for collecting of the export receivables of say $ 1000 from the overseas importers, to whom the Indian exporter has sold goods/provided services;
- The Indian exporter presents the bills for collection with the relevant supporting documents like shipping bill etc. to the Indian bank;
- As per the instructions of the exporter, the Indian Bank forwards the export bill for collection of$ 1000 to the importer's bank overseas (say Y bank) with a direction to credit the proceeds to the Indian bank's Nostro account with Y bank;
- If importer's bank does not have a bank account with Y bank it may utilize services of one or more correspondent banks to ultimately transfer the funds to the Nostro account of the Indian bank with Y bank. The Y bank is engaged by the importer's bank. The charges of the correspondent banks are borne by the Indian exporter, as deductions from the remittances to the exporter.

- Assuming there are two correspondent banks (say 'Cl bank' and 'C2 bank') and that both these banks charge$ 10 each as their charges, the net proceeds of USD 980 (i.e. $1000 minus $20) are remitted overseas to Y bank;

- Where the charges of Y bank is $8, this charges would be deducted to be borne by the Indian exporter, therefore, the net proceeds of$ 972 (i.e. $980 minus $8) is credited to the Nostro account of Indian bank with Y bank on behalf of the Indian exporter;

- When the Indian bank sights this credit in its Nostro account, it debits its Nostro account and credits the exporter's bank account in India with the Indian bank, after converting USD into INR (say $972*60= Rs. 58320/-).

- The Indian bank additionally charges its fee in Indian Rupees (INR), say Rs. 1000/- along with the applicable Service Tax thereon, which is debited to the importer's bank account maintained with the Indian bank. The Indian bank also levies Service Tax on the conversion of foreign currency into INR as per the prescribed slab rates.

From an accounting perspective, the Indian exporter would account for $1000 as sales, and $28 (bank charges) as expenses an account of foreign bank charges (i.e. charges of Y bank, C 1 and C2 bank) in its books of account in addition to the bank charges of Rs. 1,000 of the Indian bank plus the applicable Service Tax thereon.

17. With regard to the above contention of the Banking Industry, the Service Tax is an indirect tax and the end customer bears the incidence of all costs, expenses, taxes of each stage of the process of the resultant goods/services being provided to him and CENVAT may be availed at each stage of the process of the resultant goods/services being provided to him. It does not mean that the end customer is liable to discharge the duty liability/service tax, at each stage and it is for such purpose that input tax credit is made available for each stage of value addition within the whole chain of services provided by service providers, in the form of CENVAT Credit Rules, 2004.

18. Further, while the transaction of export and requirement of forwarding of documents and realisation of proceeds by way of receiving remittance in foreign currency emanates from the Indian exporter, the Bank in India provides the required services to the Indian exporter at his behest and not suo-moto. The URC 522/ UCP 600 also make it clear in their Articles as to who will bear the costs and charges thereof. Importantly, the foreign bank does not recognise the client of the Bank in India and recognizes only the Bank in India. Any entity provides service to an entity recognised by it, not to an entity it does not recognise. Therefore, the foreign bank provided service to the Bank in India and not to the client of the Noticee. The Noticee would seek to recover from its client, its fees for provision of service to its client and also the expenditure incurred by the Bank in India in procuring the services of the foreign bank to enable it to provide its service.

19. The Noticee has placed reliance on Order in original no. 48/STC/ADC (JSN)/2013-14 in the matter of Cadila Pharmaceuticals Ltd. wherein the transaction was between exporter and foreign bank and Indian bank was not involved in the transaction in any way.

20. The details submitted by the Bank and the calculation of Service Tax thereon for the

purpose of this notice, (including Central Bank of India MCB Baroda, Race Course Branch, Baroda, MCB Surat, Surat Main Office, Jamnagar Main Office, Rajkot Main Office and Lal Darwaja Branch, Ahmedabad Foreign Bank Charges (converted into INR comes to Rs.5,85,98,593/- and Service Tax comes to Rs.76,22,909/- covering the period from October 2012 to March 2017.

21. It appeared that the Noticee have not paid the Service Tax amounting to Rs. 76,22,909/- on the foreign bank charges recovered by the foreign banks against processing of export documents and remittance of foreign currency, in respect of export documents processed through their Branches during the period October 2012 to March 2017.

22. In terms of Rule 3 of the Place of Provision of Service Rules, 2012 "The place of provision of a service shall be the location of the recipient of service:

Provided that in case the location of the service receiver is not available in the ordinary course of business, the palace of provisions shall be the location of the provider of service." Therefore, the place of provision of service is India, since the service is received by the Bank in India from foreign banks, and hence taxable in India.

23. In light of the foregoing, it revealed that the Bank is the service recipient of services provided by foreign banks, which are essential for the Bank to provide the service of realisation of bills at the request of its exporter-customers and the service of issuance of LC at the request of the importer-customers, and being LC issuing bank, pays foreign Bank charges to the foreign Bank for services provided by them in connection with the LC.

24. It appeared that the Noticee had received aforesaid taxable service from Foreign Banks, which were not disclosed in their ST-3 returns filed and thereby had contravened the provisions of the Finance Act, 1994 and the Rules framed there under, in as much as they have:

(a) Failed to disclose fully and truly, the correct value of actual taxable services received by them. The facts came to the notice of the department during the course of present investigation otherwise this would have remained undetected, resulting into non-payment of service tax as required under Rule 5(1) of Service Tax (Determination of value) Rules, 2006 and Section 67 read with Notification No. 30/2012-S.T. dated 20.6.2012 for the period from October 2012 to March 2017;

(b) Failed to pay service tax on the taxable value of aforesaid services within the prescribed time in contravention of section 68(2) and in contravention of Notification No. 30/2012-S.T. dated 20.6.2012 read with Rule 7 of the Point of Taxation Rules, 2011 and Rule 3 of place of Provision of Services Rules, 2012 for the period from October 2012 to March 2017;

(c) Failed to assess the Service Tax due on the value of taxable services received by them and failed to file proper and correct periodical returns as prescribed under section 70 read with read with Notification No. 30/2012-S.T. dated 20.6.2012 and Rule 7 of the Service Tax Rules, 1994 for the period from October 2012 to March 2017, on the due dates;

(d) Failed to correctly pay the Service Tax at appropriate rate on the taxable value, accounted for in their books of accounts, for the aforesaid taxable services received by them during the period from October 2012 to March 2017, in contravention of Section 66B and Notification No. 30/2012-S.T. dated 20.6.2012 read with Rule 7 of the Point of Taxation Rules, 2011 and Rule 3 of Place of Provision of Services Rules, 2012;

(e) Failed to correctly declare the taxable receipts which resulted in to non payment of service tax, the correct nature and value of aforesaid taxable service received by them during the period from October 2012 to March 2017, and, therefore, the sub-section (1) of Section 73 of the Act is being invoked for demanding the service tax not paid by the Bank.

(f) Further the above acts of contraventions constitute offences of the nature as described under the provisions of Sections 76, 77 & 78 of the Finance Act, 1994 and accordingly the Bank is liable to penalties under the provisions of Section 76 for failure to pay Service Tax, Section 77 of the Finance Act, 1994 for failure to assess proper Service Tax and furnish correct periodical ST-3 returns as required under Section 70 of the Finance Act, 1994 read with Rule 7 of STR, 1994 and section 78 of the Finance Act, 1994 for suppressing the taxable value with an intent to evade payment of Service Tax for aforesaid contravention.

25. Therefore M/s. Central Bank of India, Central Bank Building, Post No. 205, Lal Darwaja, Ahmedabad were called upon to show cause to the Additional Commissioner of Central Excise & CGST, 1 Floor, Central Excise Bhawan, Revenue Marg, Ambawadi, Ahmedabad as to why:-

(a) they should not be treated as recipient of "service" provided by the foreign bank and liable to pay Service Tax under Reverse Charge Mechanism in terms of Notification No. 30/2012-S.T. dated 20.06.2012 as amended;

(b) Service Tax totally amounting to Rs. 76,22,909/- (including cesses) as detailed in the show cause notice, which was not paid by them on amounts booked by it on the taxable value totally amounting to Rs. 5,85,98,593/ should not be demanded and recovered from them under the provisions of Section 73(1) of the Act.

(c) Interest should not be demanded and recovered from them for non-payment of the aforesaid dues within the period prescribed, under Section 75 of the Act read with Rule 6 of the Service Tax Rules, 1994;

(d) Penalty should not be imposed upon them under Section 76 of the Act for non-payment of Service Tax on due dates;

(e) Penalty should not be imposed upon them under section 78 of the Finance Act, 1994 for failure to pay the service tax by resorting to suppression of facts;

(f) Penalty should not be imposed on them under section 77 of the Act for failure to furnish true and correct S.T.-3 returns within the period prescribed under Section 70 ibid read with Rule 7 of the Service Tax Rules, 1994.

26. The aforesaid show cause notice was made answerable to the Additional Commissioner, CGST & Central Excise, Ahmedabad North vide corrigendum. No. DGGSTI/BhZU /36001/45/2018 dated 27.09.2019 issued by the Additional Director General, DGGSTI, Bhopal.

Defence Reply:

27. Vide letter dated 17.10.2018 M/s. Anand Desai & Associates, on behalf of the noticee, submitted detailed submission as below:-

The Noticee being a registered entity was regularly discharging the service tax under "Banking and Other Financial Services category since it is registered with the department. They denied all the allegations made in the Show Cause Notice. They stated that the allegations made in the SCN are not sustainable. They are an office of a Nationalized Bank governed and controlled by 'The Reserve Bank of India" and do not have any intent to act with malice or have not willfully evaded payment of service tax or any other amount for the period under dispute. They stated that the demand is not sustainable, extended period is not invokable as there is no mens-rea. They submitted that the SCN is based on conjectures and surmises and as per the decision in the case of Oudh Sugar Mills vs. UOI 1978 (2) ELT 072 SC it has been held that the SCN cannot be based on assumption and presumptions and therefore the impugned SCN is liable to be dropped.

28. They submitted that in the instant case it is important to understand the transaction before going into the taxability issue of the transaction. They explained the transaction as -

- When exporter exports the goods, the consideration for such exports is required to be realized through banking channel.
- For this purpose, the documents are handed to their banker in India for realizing the amount.
- It would appear that the Indian bank in turn sends the documents to foreign bank of the buyer and thus, through banking channel, the sale proceeds are realized.
- Normally, some small deduction is made by the foreign bank from the amount payable to them and to that extent; lesser amount is realized by Indian bank.
- The Indian bank charges exporters their charges for collection.

29. They submitted that the charges collected by the foreign banks in relation to processing of Import/Export Documents are on account of the exporter/Importer. The foreign bank collects the proceeds from the foreign customers and after deducting its due charges and further remits the proceeds to the Indian Bank. The Indian Bank credits these proceeds after converting to INR to the account of the exporter. Thus the proceeds as well as the charges are liability of the exporter. The Indian Bank collects its charges for the services rendered to the exporter separately and discharges the tax dues thereon. Further it is also submitted that the charges collected by the foreign banks are never debited in Profit and Loss accounts of the Indian bank as the same cannot be treated as expenditure of the Indian Bank. The Indian Bank acts merely as a collection agent on behalf of the exporter. Therefore, in the instant case question of payment of Service Tax under RCM doesn't arise at all. The services of Indian bank, if be considered as intermediary services, which fall under POPS – Rule 9. Under Rule 9, the tax is payable by the service

provider. The foreign bank charges are recovered by the foreign bank from the remittance due to exporter. If they have to charge tax on the foreign bank charges the same cannot be practical since the service provider is the foreign bank and the foreign bank is located outside the taxable territory.

30. They submitted that in case of Import and Export transactions the recipient of service is either the exporter or the importer who is liable to pay the tax on foreign bank charges. Since there is no privity of contract between the Indian Banks and the foreign banks they cannot be considered as Service Providers or recipient. The Indian banks acts on account, instructions of the client. They further referred to the circular No. 163/ 14/2012 -ST F. No. 354/119/2012-TRU which states that-

'3. *In case any fee or conversion charges are levied for sending such money, they are also not liable to service tax as the person sending the money and the company conducting the remittance are located outside India. In terms of the Place of Provision of* Services *Rules, 2012, such services are deemed to be provided outside India and thus not liable to service tax.*

4. It is *further clarified that even the Indian counterpart bank or financial institution who charges the foreign bank or any other entity for the services provided at the receiving end,* is *not liable to service tax as the place of provision of such service shall be the location of the recipient of the service, i.e. outside India, in terms of Rule 3 of the Place of Provision of Services Rules, 2012."*

31. They stated that the Circular issued by the board clearly states that such charges are not liable to Service tax as the place of supply is the outside India i.e taxable territory. They further submitted that the clarifications issued by way of issuance of circulars/trade notices are binding on the departmental officers and they are bound to follow the circulars/trade notices. This view is supported by the decision given by the Supreme Court in the case of *Collector of Central Excise, Vadodara vs Dhiren Chemical Industries [2002 (139) ELT 3 (SC)].* In this decision, Hon'ble Supreme Court has held that the order passed by the revenue authorities in contravention to the clarifications given is void ab initio. Therefore, the circular issued by the board is binding upon the revenue authority and therefore the demand must be dropped. They relied on the judgment in the matter of Cadila Pharmaceuticals Ltd wherein the learned Additional Commissioner has observed in Para 30.2 that the liability to pay tax on foreign bank charges is on the exporter and not on the Bank. Therefore, they stated that they are not liable to pay service tax on the foreign bank charges.

32. They stated that the provision for imposition of Interest under Section 75 of the Finance Act 1994 from the due date till the date of actual payment is inapplicable in the present case in view of their submissions, contentions and explanation stated above.

33. With reference to the proposal for imposing penalty, they stated that penalty under Section 76 and Section 78 of the Finance Act, 1994 cannot be simultaneously levied. They relied the following case laws:-

- Hon'ble Tribunal in the case of Jivant Enterprise vs. Commissioner of Service Tax, Ahmedabad reported in 2012 (28) STR (Tri- Ahmd)
- In CCE v. First Flight courier Ltd. (2011) 22 STR 622 (P & H) High Court held that penalty u/s 76 is not justified

if penalty under section 78 is imposed.

- Hon'ble Karnataka High Court in the matter of *Motor* World(2012(27) STR225, Karnataka High court).
- The Financers vs. CCE, Jaipur (2008 TMI- 4599 > CESTAT, NEW DELHI)
- West Minister International Pvt Ltd vs CCE [140-ELT-244]
- CCE Vs Rabindra Das [2006-003-STR-0I55]
- Even prior to 10.05.2008, the above referred legal position was confirmed by Judiciary from time to time. They relied on the principle laid down in the case of CCE, Lucknow Vs. M/s. Orbit Travels.
- Kamal Photo Studio and Colour Lab vs CCE [2007-7-STR-307].
- CCE vs Silver Oak Gardens Resort [2008-9-STR-481]
- Lawson Travel &: Tours India Pvt Ltd vs CCE [2006-1-STR-IOI] "
- Jewel Hotel Pvt Ltd vs CCE [2007-6-STR-240]
- CCE vs Sujata Star Tele Club [2006-4-STR-194]

34. They stated that they had not resorted to contumacious or dishonest conduct, with deliberate intention to evade tax, or contumaciously defy law and stated that no penalty can be imposed under Section 76 and 78 of the Act in the absence of "mens rea" or "culpable mental state.". They placed reliance on the Supreme Court decision in State of Madhya Pradesh Vs. Bharat Heavy Electricals Limited, 1997 (99) **ELT 33 (SC),** wherein it was held that merely because penalty is prescribed under law, it need not be mandatorily imposed.

35. Regarding penalty under Section 78 of the Finance Act, 1994, they stated that there is no fraud, Collusion; or Wilful mis-statement; or Suppression of facts; or contravention of any of the provisions in their case and therefore, no penalty can be imposed under Section 78 and extended period can also not be invoked in their case. They relied the decision of Hon'ble Supreme Court in Rainbow Industries V/s CCE- 1994 (74) ELT 3(SC) 1994 (6) SCC 563. Further, in the Judgment of Hon'ble Supreme Court, in Anand Nishikawa Co. Ltd Vs. Commissioner of Central Excise Appeal, Meerut 2005 (188) E.LT 149 (SC) it was observed that 'Suppression of facts' can have only one meaning that correct information was not deliberately disclosed to evade payment of duty, when facts were known to both the parties, omission by one to do what he might have done not that he must have done would not render it suppression. Mere failure to declare does not amount to willful suppression. There must be some positive act from the side of noticee to find willful suppression. There was no deliberate intention on the part of the Noticee not to disclose correct information or to evade payment of service tax. They also relied the case of EssEss Engineering Vs CCE, Chandigarn (2010-TIOL-1447-CESTAT-DEL), CCE-Vs Ballarpur Industries Ltd (2007 (11 STT 6(SC), Pahwaa Chemicals Vs CCE 2005(189) ELT 257 (SC), RM Dhariwal (HUF) Vs Commissioner of C.Ex, Pune-II & III (2009(242) LT 391 (Tri-Mum), Mangalore Refinery & Petrochemicals Ltd Vs CCE & ST Mangalore 2005 (11) TMI 709 – CESTAT Bangalore. They stated that they are government authority and Hon'ble

Allahabad High court in the matters of M/s.BSNL (2015 39 STR 5 (All) wherein penalty was waived off considering that the noticee being a government entity there can not be an intention to evade taxes. They also relied the case of UOI Vs Rajasthan Spinning & Weaving Mills (2009 TIOL 63 SC EX, Hindustan Steel Vs State of Orissa 1978 (2) ELT (J159), Motilal Padampat Sugar Mills Co.Ltd Vs State of Uttar Pradesh (1979) 118 ITR 326 (SC), Azadi Bachao Andolan Vs UOI (2001) 252 ITR 471, State of Madhya Pradesh Vs Bharat Heavy Electricals Ltd 1997 (99) ELT 33 (SC).

36. They stated that they are of a prominent Nationalized Bank governed by the Reserve Bank of India. Being a Public Sector Undertaking sort of or akin to Government Office, alleging of having malafide intentions or non complying with rules and regulation pertaining to taxation regime is highly deplorable and unwarranted. The Central Bank of India has sought Centralized Registration. The Central Bank of India has been regular and meticulous in complying with law pertaining to service tax. It has been correctly computing and depositing its Service Tax Liability before due date. Therefore, they are not liable to pay penalty in terms of Section 77 of the Finance Act, 1994. Also, they have not violated any of the provisions of Finance Act, 1994 and they requested to accept their contentions and drop the proceedings. They also requested to be heard in person.

Personal Hearing.

37. Personal hearing in this case was held on 31.08.2020. Shri Anand A Desai, CA, duly authorised by the noticee appeared for personal hearing. He reiterated his written submission dated 17.10.2018 and submitted an additional written submission dated 31.08.2020 and requested to drop the SCN proceedings. The submission dated 31.08.2020 contained the submissions dated 17.10.2018 and case laws of BGR Energy Systems Ltd reported in 2019(11) TMI 1130-Madras High Court, OIA No.BHO-EXCUS-001-APP-399-18-19 dated 28.02.2019 passed by Commissioner (Appeals) CGST, Customs & Central Excise: Bhopal (MP) and order passed by the Principal Bench, CESTAT, New Delhi in the case of State Bank of Bikaner & Jaipur, Vs Commissioner of Central Excise & Service Tax, Rajasthan (final order No.50737/2020 dated 26.02.2020/05.08.2020.

Discussion & Findings:

38. I have carefully gone through the records of the case, written submission dated 17.10.2018 and 31.08.2020 and submission made before me during the personal hearing.

39. The issue to be decided in the present case is whether the service provided by the foreign bank and received by the noticee is liable to pay Service Tax under Reverse Charge Mechanism as per Notification No.30/2012-ST dated 20.06.2012 as amended or otherwise.

40. The Show Cause Notice has alleged that the Noticee was not discharging Service Tax under reverse charge mechanism on the Services received for processing of export documents and realization of proceeds from the Bank/Financial institutions located in nontaxable territory, that the Noticee were providing services to their customers for processing of export documents

and remittance of export proceeds. For this purpose they availed services of their counterpart Foreign Banks located in non taxable territory. In turn foreign banks recovered amount towards services provided to the Noticee bank. The foreign bank deduct/recover the consideration for services so provided from the respective export proceeds realized and remit only remaining amount to the Indian Bank. As per Rule 3 of Place of Provision of Service Rules, 2012, the location of service receiver is the place of provision of service therefore liability to pay Service tax in such circumstances, would be on the Service recipient bank in India under reverse charge mechanism as per Notification No.30/2012-ST dated 20.6.2012. Therefore, the Department is of the view that an amount of **Rs. 5,85,98,593/-** recovered/deducted by the Foreign Bank on account of the services provided to the Noticee and since the Service provider is located in non taxable territory, Service Tax amounting to **Rs. 76,22,909/-** is recoverable from the Noticee under RCM under Section 73 of the Finance Act, 1994.

41. The noticee explained the process in detail as and when exporter exports the goods, the consideration for such exports is required to be realized through banking channel, for this purpose, the documents are handed over to their banker in India for realizing the amount, the Indian bank in turn sends the documents to foreign bank of the buyer and thus, through banking channel, the sale proceeds are realized. Normally, some small deduction is made by the foreign bank from the amount payable to them and to that extent; lesser amount is realized by Indian bank and the Indian bank charges exporters their charges for collection.

42. During the course of personal hearing they have produced copy of order passed by the Principal Bench, CESTAT, New Delhi in the case of State Bank of Bikaner & Jaipur V/s Commissioner of Central Excise & Service Tax, Rajasthan (final order No. 50737/2020 dated 26.02.2020/05.08.2020). It is understood the said case has not been reached finality. The noticee also had produced a copy of Order in Appeal No.BHO-EXCUS-001-APP-399-18-19 dated 28.02.2019 passed by the Commissioner (A), Bhopal in the case of Central Bank of India Zonal Office, Bhopal in similar case, the Commissioner (A) has set aside by the order-in-original passed by the Assistant Commissioner, Central GST, Division-II, Bhopal (MP) and allowed the appeal filed by the Central Bank of India. In the said case also, the case was investigated and booked by the DGCEI and Service Tax was demanded under RCM. I find that the said Order in Appeal has not been accepted by the Department and an appeal has been filed before CESTAT, New Delhi, as informed by the CGST authorities vide letter dated 04.12.2020.

43. I find that the noticee are engaged in providing services to their customers for processing of export documents and remittance of export proceeds. For this purpose, they avail services of the foreign banks located in non-taxable territory. To this effect, RBI has made it mandatory for all AD Category-1 banks to adhere to the provisions of the UCP 600 while opening letter of credit for import into India on behalf of their constituents. These are in the nature of mandatory regulations to be followed by Indian Banks. The articles of protocol of UCO 600 show that there is an arrangement between banks in India and foreign banks, whereby, the foreign banks recognizes only the Bank in India for providing their services and for collection of their charges.

In such a case, when foreign banks are recovering certain charges for processing of import/export documents regarding remittances of foreign currency, the banks in India are undoubtedly the recipient of service.

44. In this regard, reliance is placed on the judgment of Hon'ble Tribunal in the case of M/s.Gracure Pharmaceuticals Ltd Vs Commissioner of Central Excise, Jaipur-1 reported in 2013(32)STR/249 (Tri-Del) and the Trade Notice No.20/2013-14-ST-1 dated 10.02.2014 issued by Commissioner of Service Tax-1, Mumbai which clarifies that "in cases where foreign banks are recovering certain charges for processing of import/export documents regarding remittance of foreign currency, the banks in India would be treated as recipient of service and therefore, required to pay service tax". Even in the case of Raj Petro Specialities Pvt.Ltd Vs CCE, Silvassa, the tribunal in its order dated 17/08/2018 (Appeal No.ST/11055/2015-DB) has observed that in the said situation Indian Banks are service recipient of the of the service provided by Foreign Banks.

45. The view of the Commissioner (A) in OIA No.BHO-EXCUS-001-APP-399-18-19 dated 28.02.2019 in the case of Central Bank of India, Zonal Office, Bhopal that no payment is made by the Indian Bank to the foreign bank is not true as in as much as the foreign bank after receipt of the amounts from importer deducts certain charges and passes on the remaining amount to the Indian Banks. The amount retained by the foreign bank is nothing but the service charges for processing of import/export documents. On going thrugh the facts of the case, it is found that during the processing of export of documents and remittance of export proceeds, there is always correspondence between the foreign bank and the bank in India. Even the amount of charges collected by foreign bank is informed only to bank in India. The exporter or importer in India comes to know about these charges through their own bank in India. Further, in the case of export transactions, if the remittance could not be aid by the foreign importer, in that case, foreign bank recovers the charges from banks in India only and in case of import transactions, if the foreign exporters do not bear the foreign bank charges, the same are recovered by the foreign bank from the bank in India. This arrangement has been made under Articles of URC 522/UCP 600. The combined reading of the relevant articles in the said two internationally accepted protocols clearly show that services are provided by the foreign bank to the Bank in India. Therefore, the noticee, being a service recipient, are required ton pay service tax under reverse charge mechanism under Notification No.30/2012-ST dated 20.06.2012.

46. In view of the above discussion, I hold that the Bank is the service recipient of services provided by foreign banks, which are essential for the Bank to provide the service of realisation of bills at the request of its exporter-customers and the service of issuance of LC at the request of the importer-customers, and being LC issuing bank, pays foreign Bank charges to the foreign Bank for services provided by them in connection with the LC.

47. I find that the Noticee had received aforesaid taxable service from Foreign Banks, which were not disclosed in their ST-3 returns filed and thereby had contravened the provisions of the Finance Act, 1994 and the Rules framed there under and they have:

(a) Failed to disclose fully and truly, the correct value of actual taxable services received by them. The facts came to the notice of the department during the course of investigation by

DGGSTI otherwise this would have remained undetected, resulting into non-payment of service tax as required under rule 5(1) of service Tax (Determination of value) Rules, 2006 and section 67 read with Notification No. 30/2012-S.T. dated 20.6.2012 for the period from October 2012 to March 2017;

(b) Failed to pay service tax on the taxable value of aforesaid services within the prescribed time in contravention of section 68(2) and in contravention of Notification No. 30/2012-S.T. dated 20.6.2012 read with Rule 7 of the Point of Taxation Rules, 2011 and rule 3 of place of Provision of Services Rules, 2012 for the period from October 2012 to March 2017;

(c) Failed to assess the Service Tax due on the value of taxable services received by them and failed to file proper and correct periodical returns as prescribed under section 70 read with read with Notification No. 30/2012S.T. dated 20.6.2012 and Rule 7 of the Service Tax Rules, 1994 for the period from October 2012 to March 2017, on the due dates;

(d) Failed to correctly pay the Service Tax at appropriate rate on the taxable value, accounted in their books of accounts, for the aforesaid taxable services received by them during the period from October 2012 to March 2017, in contravention of Section 66B and Notification No. 30/2012-S.T. dated 20.6.2012 read with Rule 7 of the Point of Taxation Rules, 2011 an. Rule 3 of Place Provision of Services Rules, 2012;

(e) Failed to correctly declare the taxable receipts which resulted in non payment of service tax, the correct nature and value of aforesaid taxable service received by them during the period from October 2012 to March 2017, and therefore, I hold that Service Tax to the tune of Rs.76,22,909/- is to be recovered along with interest under sub-section (1) of Section 73 of the Finance Act, 1944 invoking extended period of limitation.

(f) Therefore, I hold that the noticee have contravened the provisions of Sections 76, 77 & 78 of the Finance Act, 1994 and accordingly they are liable to penalties under the provisions of Section 76 for failure to pay Service Tax, Section 77 of the Finance Act, 1994 for failure to assess proper Service Tax and furnish correct periodical ST-3 returns as required under Section 70 of the Finance Act, 1994 read with Rule 7 of STR, 1994 and section 78 of the Finance Act, 1994 for suppressing the taxable value with an intent to evade payment of Service Tax for aforesaid contravention.

48. I find that the show cause has proposed penalty under Section 76 of the Finance Act, 1994. Regarding the issue of imposition of penalty under Section 76 of the Finance Act, 1994, I observe that penalty under Section 76 and 78 of the Finance Act, 1994 are mutually exclusive and once penalty under Section 78 is imposed, no penalty under Section 76 can be imposed in terms of the proviso inserted in Section 78 w.e.f 10.5.2008 in this regard. Therefore, I do not propose any penalty in terms of Section 76 of the Finance Act, 1994.

49. In view of my findings above, I pass the following orders:-

ORDER

(a) I order that M/s. Central Bank of India (noticee) be treated as recipient of "service" provided by the foreign bank and hold that they are liable to pay Service Tax under Reverse Charge Mechanism in terms of Notification No. 30/2012-S.T. dated 20.06.2012 as amended;

(b) I confirm the Service Tax totally amounting to Rs. 76,22,909/- (including cesses) (Rupees seventy six lakhs twenty two thousand nine hundred nine) which was not paid by the noticee on amounts booked by it on the taxable value totally amounting to Rs. 5,85,98,593/ and order that the said Service Tax amount be recovered from them under the provisions of Section 73(1) of the Finance Act, 1994.

(c) I order M/s. Central Bank of India, Zonal Office, Central Bank Building, Post No.205, Lal Darwaja, Ahmedabad to pay interest at the appropriate rate on the amount of Service Tax confirmed above under Section 75 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994;

(d) I do not impose any penalty under Section 76 of the Finance Act, 1994 on the noticee.

(e) I impose a penalty of Rs.76,22,909/- (including cesses) (Rupees seventy six lakhs twenty two thousand nine hundred nine only) on M/s. Central Bank of India, Zonal Office, Central Bank Building, Post No.205, Lal Darwaja, Ahmedabad under section 78 of the Finance Act, 1994.

(f) I impose a penalty of Rs.10,000/- (Rupees ten thousand only) on M/s. Central Bank of India, Zonal Office, Central Bank Building, Post No.205, Lal Darwaja, Ahmedabad under section 77 of the Finance Act, 1994.

50. I further Order that in the event the entire amount demanded as above is paid within thirty days from the receipt of this Order along with applicable interest, the amount of penalty liable to be paid by the noticee shall be 25% (twenty five per cent) of the penalty imposed at Sr. No.(e) above, subject to the condition that such reduced penalty is also paid within the said period of 30 days (thirty days) in terms of clause (ii) of Section 78(1) of the Finance Act, 1994.

51. Show Cause Notice No. 18/BhZU/ADG/ST/2018 (F.No. IV/(6)Misc-Enq/73/2016/1711) dated 12.03.2018 issued against M/s.Central Bank of India, Central Bank Building, Plot No.205, Lal Darwaja, Ahmedabad, is disposed-off in the above manner.

(M.L. Meena)
AdditionalCommissioner,
Central GST & Central Excise,
Ahmedabad North.

By Regd Post AD
F. No. STC/04-60/OA/Central Bank/2017-18

Date: 18.12.2020

To

M/s.Central Bank of India,
Central Bank Building, Plot No.205,
Lal Darwaja, Ahmedabad.

Copy to:
(1) The Commissioner, Central GST & Central Excise, Ahmedabad North.
(2) The Additional Director General, Directorate General of Goods & Service Tax Intelligence, Bhopal Zonal Unit, IV Floor, Chinar Incube Business Centre, Hoshangabad Road, Bhopal-462011.
(3) The Deputy/Assistant Commissioner, CGST & Central Excise, Division-II, Ahmedabad North.
(4) The Superintendent, Central GST & Central Excise, Range-I, Division-II, Ahmedabad North
(5) Guard File.