


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

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

फा .सं/. STC/15-54/OA/2020

DIN-20211164WT0000222FA4

आदेश की तारीख / Date of Order : 22.11.2021  
जारी करने की तारीख / Date of Issue : 23.11.2021

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV

आयुक्त / COMMISSIONER

मूल आदेश संख्या / AHM-EXCUS-002-COMMR-29/2021-22

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-29/2021-22

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

विषय: -कारण बताओ सूचना:

Subject- Proceedings initiated vide Show Cause Notice No. STC/15-54/OA/2020 dated 28.09.2020 issued to M/s. RACHNA INFRASTRUCTURE LTD, B-405, ANGEL COMPLEX, RAILWAY CROSSING, OPP OLD HIGH COURT, AHMEDABAD:380009-GUJARAT.

**BRIEF FACTS OF THE CASE:**

M/s. V-Logistics Services, situated at 100, Laxminagar Row House, Nr Bank Of Baroda, Kaligam, Sabarmati, Digvijay Nagar, Ahmedabad (hereinafter referred to as the 'Assessee' for the sake of brevity) are registered under Service Tax and are having Service Tax Registration No. AAVPT7952PST001 .

2. An information was received from CBDT regarding third party data for the Financial Year 2014-2015 to 2016-17, wherein it appeared that the assessee had declared different values in Service Tax Return (ST-3) and Income Tax Return (ITR/Form 22AS).

3. On scrutiny of the data, it was noticed that the Assessee had declared less taxable value in their Service Tax Return (ST-3) for the F.Y.2014-2015 to 2016-17 as compared to the Service related taxable value declared by them in their Income Tax Return (ITR)/ Form 26AS, as under:

(Amount in Rs.)

Sr No	F. Y.	Total Saic of Service as per ITR	TOTAL GROSS VALUE PROVIDED (STR)	VALUE DIFFERENCE in ITR and STR	Resultant Service Tax short paid (including Cess)
1.	2014-15	117780548/-	5182241/-	112598307/-	13917151/-
2.	2015-16	108002151/-	10914752/-	97087399/-	14077673/-
3.	2016-17	79005212/-	8507692/-	70497520/-	10574628/-

4. To explain the reasons for such difference and to submit documents in support thereof viz. Balance Sheet, Profit & Loss Account, Income Tax Returns, Form 26AS, Service Income and Service Tax Ledger and Service Tax Returns (ST-3) for the Financial Year 2014-15, Letters dated 08.02.2018, 25.06.2019 and 17.07.2020 were issued by the department to the said assessee. The assessee neither submitted any details/documents explaining such difference nor responded to the letters in any manner. Due to this reason, no further verification could be done in this regard by the department.

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

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

quantify short payment of Service Tax, If any, for the period from 2017-18 (upto June-2017).

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

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

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

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

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

10. It is revealed that the assessee had contravened the provisions of Chapter-V of the Finance Act, 1944, the Service Tax Rules, 2004, failed to declare correctly, assess and

pay the service tax due on the taxable services provided by them and to maintain records and furnish returns, in such form i.e. ST-3 and in such manner and at such frequency, as required under Section 70 of the Finance Act, 1994 read with Rule 6 & 7 of the Service Tax Rules, 1994; Section 67 of the Finance Act, 1994 in as much as they have failed to determine the correct value of taxable service provided by them as discussed above; Section 66B and Section 68 of the Finance Act, 1994 and Rules 2 & 6 of the Service Tax Rules, 1994 in as much as they have failed to pay the Service Tax correctly at the appropriate rate within the prescribed time in the manner and at the rate as provided under the said provision. In the instant case, the said assessee had not paid service tax as worked out in the Table for Financial Year 2014-15 to 2016-17. All the above acts of contravention on the part of the said assessee appeared to have been committed by way of suppression of facts with an intent to evade payment of service tax, and therefore, the said service tax not paid was required to be demanded and recovered from them under Section 73 (1) of the Finance Act, 1994 by invoking extended period of five years. All these acts of contravention of the provisions of Section 68, and 70 of the Finance Act, 1994 read with rule 6, and 7 of Service Tax Rules, 1994 appeared to be punishable under the provisions of Section 78 of the Finance Act, 1994 as amended from time to time. The said assessee was also liable to pay interest at the appropriate rates for the period from due date of payment of service tax till the date of actual payment as per the provisions of Section 75 of the Finance Act, 1994. Section 77 of the Finance Act, 1994, in as much as they failed to file correct and true ST-3 returns.

11. It had been noticed that at no point of time, the assessee had disclosed or intimated to the Department regarding receipt/providing of Service of the differential value, that has come to the notice of the Department only after going through the third party CBDT data generated for the Financial Year 2014-2015 to 2016-17. It appeared that the said assessee had knowingly suppressed the facts regarding receipt of/providing of services by them worth the differential value as can be seen in the table hereinabove and thereby not paid / short paid/ not deposited Service Tax thereof to the extent of Rs. 3,85,69,452/- (including Cess). The same appeared to be recoverable under the provisions of Section 73(1) of the Finance Act, 1994 read with Notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST by invoking extended period of time, along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994 and penalty under Section 78 of the Finance Act, 1994.

12. Therefore a Show Cause Notice No. STC/15-54/OA/2020 dated 28.09.2020 was issued to M/s. V-Logistics Services by the Principal Commissioner, Central Excise & CGST, Ahmedabad North asking them as to why :

- (i) The Service Tax to the extent of Rs. 3,85,69,452/- (Rupees Three Crore Eighty Five lakhs Sixty Nine Thousand Four hundred Fifty Two Only) short paid /not paid by them, should not be demanded and recovered from them under the provisions of Section 73 of the Finance Act, 1994

read with Notification dated 27.06.2020 issued vide F.No.CBEC-20/06/08/2020-GST;

- (ii) Service Tax liability not paid during the financial year 2017-18 (upto June-2017), ascertained in future, as per paras no. 7 and 8 of SCN, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act,1994.
- (iii) Interest at the appropriate rate should not be demanded and recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (iv) Penalty under the provisions of Section 77(1) and 77(2) of the Finance Act, 1994 amended, should not be imposed on them.
- (v) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.

**13. DEFENCE REPLY:**

The assessee vide letter dated 01.09.2021 received on 22.09.2021 submitted their written submission. The assessee submitted that they are providing mainly two services, (A) Clearing and Forwarding Agent Services and (B) Services of Transportation of Goods. They submitted that their income from service provided from Transportation of Goods are covered under RCM and the service recipients were liable to pay the Service Tax, hence, the question of payment of Service Tax on the same does not arise in their case. They further submitted that their income from providing services as clearing and forwarding agent, they are collecting difference charges from customers like Ocean Freight, Seal, THC, BL, Agency, AWB, CMC, GSEC etc. and they need to pay the said charges to earlier forwarding agents. They are collecting Service Tax on the same charges paid to the forwarding agents. They have submitted the sample invoices for each year for both the services provided by them. Further, they have also submitted that they have earned their entire income by providing two services only. In support of their claim they have submitted the financial documents alongwith copies of Income Tax returns for the F.Y. 2014-15 to 2016-17. They have also submitted the copies of ST3 returns filed by them. They submitted that they are not liable to pay any service tax on the differential value as mentioned in the notice and have requested to close the issue.

**14. PERSONAL HEARING:**

Personal Hearing in the matter was fixed on 05.10.2021. Shri Durgesh G. Bhatt and Shri Darshan Balani appeared for personal hearing. They reiterated the contentions/arguments raised in their written submission. They requested to drop the proceedings as basically they are not liable to pay S.T and the SCN issued on the subject matter is non-sustainable.

**15. DISCUSSION AND FINDINGS:**

15.1 I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence reply dated 27.10.2020 and documents submitted by the assessee.

15.2 On going through the SCN, I find that data of Sales /Gross receipt from services were shared by the CBDT with CBIC for FY 2014-15,2015-16 and 2016-17, which was then compared with the gross value declared in ST-3 Returns filed by the assessee for F.Y.2014-15, 2015-16 and 2016-17. The difference in value of service to the extent of Rs. 11,25,98,307/- for F.Y.2014-15, Rs.9,70,87,399/- for F.Y.2015-16 and Rs.7,04,97,520/- for F.Y.206-17 was noticed and therefore, the subject SCN was issued. Accordingly, I find that the issue which requires determination as of now is whether the assessee is liable to pay service tax on the differential value of Rs.28,01,83,226/- for F.Y.2014-15 to 2016-17 under proviso to section 73(1) of Finance Act, 1944 or not.

15.3 I find that the assessee in their reply dated 01.09.2021 received on 22.09.2021 have submitted that, they are providing mainly two taxable services i.e. Clearing and Forwarding Agent Service and Transportation of Goods Service. They have stated that Transportation of Goods Services are covered under RCM and Service Tax is liable to be paid by the recipient of service. That for clearing and forwarding agent service they are collecting different charges from customers e.g. Ocean Freight , Seal , THC, BL, Agency AWB charged, CMC , GSEC etc. and they need to pay the said charges to earlier forwarding agents. They have submitted that this is like entire chain business and all agents are following same practice. They are collecting Service Tax on the same charges as paid to the forwarding agents. The assessee have submitted the sample invoices No.VSL/FWD/2016-17/275 dated 24.08.2016 and VSL/2015-16/2 dated 1.04.2015 issued by them for both the services provided by them. They have submitted that their entire income are from the above two services only. In support of their claim they have submitted the financials alongwith the copies of Income Tax return for the Financial Year 2014-15 to 2016-17. The

assessee have submitted that they had paid Service Tax regularly and filed Service Tax returns for the relevant period. They have further submitted that their consultant has not mentioned exempt income in the service tax returns and that is the main reason for the difference between value mentioned in ITR and STR. They have submitted the month wise details for the difference that had arise in ITR and STR and they have submitted that they are not liable to pay any service tax on the differential value mentioned in the SCN. They have requested to take the above facts and averments on the records and close the subject issue by dropping the SCN.

15.4 I find that the assessee has been audited by Shri Himanshu V. Shah & Associates, Chartered Accountants, M.No.105240 (Firm Reg No.118739W) and they have issued audit report dated 27.09.2012 for F.Y. 2014-15, audit report dated 27.09.2016 for F.Y. 2015-16 and audit report dated 31.10.2017 for F.Y. 2016-17 under Section 44AB of the Income Tax Act, 1961. On verification of the same, it is discerned that the assessee had income of Rs. 2,95,13,813/- (Forwarding) + Rs.8,80,91,013/-(Transport) + Rs.1,75,722/- (Direct income of loading unloading exp. & Sundry A/c) for F.Y. 2014-15, Rs. 3,41,96,716/- (Forwarding) + Rs.7,38,05,435/- (Transport) for F.Y.2015-16 and Rs.2,05,45,259.50(Forwarding) + Rs.5,84,59,953/-(Transport) for F.Y.2016-17, the same amount has been reflected in the data provided by the CBDT. It is established that amount of Sales/Gross Receipts from Services (Value of ITR) shown in SCN is tallied with the Profit & Loss Account for the FY 2014-2015,2015-16 and 2016.17. The assessee had also submitted the copy of ledger of Forwarding Income and Transportation Income for the period from 01.04.2014 to 31.03.2017 and tallied with the total sale of service provided in ITR. On verification of the ST3 filed by the assessee, it has been found that the assessee has paid the Service Tax of Rs. 6,40,525/-(including cess) on taxable value of Rs. 51,82,241/- for F.Y.2014-15, Rs. 15,44,179/- (including cess) on taxable value of Rs. 1,09,09,486/ for F.Y.2015-16, Rs.12,62,071/-(including cess) on taxable value of Rs.85,07,692/- for F.Y.2016-17 and Rs.1,55,939/-



(including cess) on taxable value of Rs. 1075429/- for F.Y.2017-18( Up to June,2017) under the category of Clearing and Forwarding agent service and transport of goods by road/goods transport agency (where receiver is not covered under RCM).

15.5. The assessee has also submitted the reconciliation statement for payment of Service Tax and income shown in ITR data for the F.Y.2014-15, 2015-16 and 2016-17, which are as under:

V LOGISTICS SERVICES 2014-2015						
MONTH	FREIGHT	REIMBURSEMENT / NON TAX	TAXABLE	S. TAX	TPT	TOTAL
APRIL	483266.59	263098.22	84686.55	9276.77328	5549450	6389778.133
MAY	1455481.52	392102.1	560386.5	68073.2871	7046230	9522273.407
JUNE	647013.14	178258.79	202413.57	24225.33055	8277903	9329813.831
JULY	4160649.12	365284.4	467088.44	56541.64688	7744100	12793663.61
AUGUST	1260683.31	255962.46	271145.73	32323.12793	8196850	10016964.63
SEPTEMBER	514079.01	543799.85	175986.69	20561.47058	8800890	10055317.02
OCTOBER	641639.63	311674.03	405369.12	48913.13893	7798400	9205995.919
NOVEMBER	2193160.29	294881.2	834935.41	102007.5924	8964440	12389424.43
DECEMBER	2200801.98	462507.42	929681.96	113718.206	7180550	10867259.57
JANUARY	1606818.56	842364.98	546964.73	66389.63633	6629200	9691737.906
FEBRUARY	2559241.03	405389.85	394281.72	47542.73629	5926550	9333005.336
MARCH	1371581.61	470943.36	309300.89	37039.1057	5976450	8165314.966
TOTAL	19094415.79	4786266.66	5182241.31	626611.9919	88091013	117780548.8

V LOGISTICS SERVICES 2015-2016							
MONTH	FREIGHT	REIMBURSEMENT / NON TAX	TAXABLE	S. TAX	SWACHIT	TPT	TOTAL
APRIL	627493.76	32578.89	386244.04	49393.65	0	6109500	7205210.34
MAY	632743.07	96377.88	332481.74	42748.6	0	6362090	7466441.290
JUNE	1817423.6	150042.45	562223.14	80584.6	0	6662890	9273163.79
JULY	2001648.5	452071.74	519656.94	74625.3	0	6577280	9625282.48
AUGUST	2284573.1	559388.24	626234.74	89546.2	0	6647800	10207542.28
SEPTEMBER	1316786.5	288627.11	426366.54	61564.6	0	5744300	7837644.75
OCTOBER	1658851.7	101712.77	1210922.04	171402	0	5822550	8965438.51
NOVEMBER	1666106.5	454765.09	979325.74	138979	3299.0822	5688750	8931225.412
DECEMBER	1236472.4	242923.6	1139077.04	161344	5757.289	6252780	9038354.329
JANUARY	1668733.2	128225.5	1692753.04	238859	8530.668	6365040	10102141.41
FEBRUARY	1628148.5	118234.33	1364518.04	192906	6889.4951	6069230	9379926.365
MARCH	2452057.8	88042.05	1674949.04	242834	8672.6514	5503225	9969780.541
TOTAL	18991038.63	2712989.65	10914752.08	1544786.95	33149.1857	73805435	108002151.5

V LOGISTICS SERVICES 2016-2017								
MONTH	FREIGHT	REIMBURSEMENT / NON TAX	TAXABLE	S. TAX	CESS	KRISI CESS	TPT	TOTAL
APRIL	1076083.2	261988.51	1606193	226151	8076.8215	0	5243060	8421552.534
MAY	792309.698	364959.41	1152524	162637.3	5808.4749	0	5637001	8115239.88
JUNE	779973.99	259880.5	1041533	150248.64	5366.0228	5366.0228	5101610	7343978.174
JULY	842458.36	195947	682347.4	100123.83	3575.85375	3575.8538	5393260	7221288.293
AUGUST	751628.83	186775.75	843719.7	119442.54	4265.8051	4265.8051	5719257	7629355.433
SEPTEMBER	1359735.9	356260.4268	1031377	145620.81	5200.74315	5200.7432	5993273	8896668.621
OCTOBER	372543.35	46583.66	146492.1	21792.879	778.3171	778.3171	4951568	5540536.623
NOVEMBER	238587.82	21766.5	232740	33867.579	1209.5564	1209.5564	3411790	3941171.012
DECEMBER	184731.91	10759.78	73949.85	11636.965	415.6059	415.6059	4622115	4904024.717
JANUARY	182375.09	31225	210727.5	30785.832	1099.494	1099.494	4112989	4570301.41
FEBRUARY	613504.58	97749.16	981314.9	138668.08	4952.43125	4952.4313	3393705	5234846.578
MARCH	622425.83	1101633.42	504773.1	71952.219	2569.7221	2569.7221	4880325	7186249.013
TOTAL	7816358.56	2935529.117	8507691.6	1212927.7	43318.84795	29433.552	58459953	79005212.29

On going through the reconciliation statement submitted by the assessee, I am of the view that there is no short payment of Service Tax by the assessee. Further, data provided by the Income Tax department is for taxable as well as non-taxable income, which has been shown as sales value in the Income Tax return for F.Y.2014-15, 2015-16, 2016-17, therefore, it has resulted in the difference of value declared in ST3 returns and ITR. The

assessee has filed the income tax returns for the taxable and non-taxable income earned by him, however, non-taxable amount is not shown in the ST3 returns.

15.6 I find that the assessee in their reply dated 01.09.2021 received on 22.9.2021 have submitted that service provided for Transportation of Goods by them are covered under RCM and the service recipient are liable to pay the Service Tax. I am in agreement with the argument submitted by the assessee and find that the CBEC has issued Notification No.30/2012-ST dated 20.06.2012, the said notification at Sr. No. I A states that (ii) the liability of payment of Service Tax has been shifted on the person who is receiving the service, the gist of the said areas under;

*GSR.....(E).-In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2012-Service Tax, dated the 17<sup>th</sup> March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 213(E), dated the 17<sup>th</sup> March, 2012, and (ii) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2004-Service Tax, dated the 31<sup>st</sup> December, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 849 (E), dated the 31<sup>st</sup> December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely:-*

I. The taxable services

A (i).....

*(ii) provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,-*

*(a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);*

*(b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;*

*(c) any co-operative society established by or under any law;*

*(d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;*

*(e) any body corporate established, by or under any law; or*

*(f) any partnership firm whether registered or not under any law including association of persons;*

16 The assessee has also submitted the Audit Report for the F.Y.2014-15, 2015-16 and 2016-17 issued by Shri Himanshu V. Shah & Associates, Chartered Accountants, 8, Vasupooja Society, Opp. Vitrag Flats, P.T. College Road, Paldi, Ahmedabd-38 007 under Section 44AB of the Income Tax Act,1961. Section 44AB of Income Tax, Act,1961 is reproduced below;

Section 44AB Income tax Act 1961 2021

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

**44AB.** <sup>6</sup>Every person,—

(a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year <sup>2</sup>[\*\*\*]:

<sup>8</sup>[Provided that in the case of a person whose—

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

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

<sup>2</sup>[Provided further that for the purposes of this clause, the payment or receipt, as the case may be, by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the payment or receipt, as the case may be, in cash,]

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

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

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

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

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

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

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

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

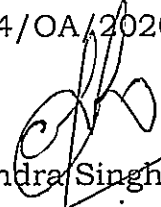
17. Having considered these factual and documentary evidences available on records, I find no reason to disregard the assessee's arguments that they are providing taxable services i.e. clearing and forwarding agency service as well as non-taxable services i.e. transport of goods by road/goods transport agency service. I am therefore of the view that the assessee has established their case quite clearly that the difference in value of service is on account of sale of services provided by them for Goods Transport Agency Service, and the same is covered under the Notification No.30/2012 dated 20.06.2012 and they have paid the Service Tax on taxable services i.e. Clearing and Forwarding agency service. I therefore hold that no service tax is payable by the assessee as demanded in the subject SCN.

18. In view of the facts and circumstances pertaining to the case as aforementioned, the demand is not tenable in law, accordingly I do not consider it necessary to devolve in the merits of invoking extended period of

limitation which has been discussed in the SCN at length and contested by the said assessee in their submissions. For the same reasons, I am also not entering into discussions on imposing penalty and interest. Therefore, from the factual matrix and the question of law as discussed in the foregoing paras, I pass the following order: -

**ORDER**

I drop the proceedings initiated against M/s. V logistics Services, 100, Laxminagar Row House, Nr. Bank of Baroda, Kaligam, Sabarmati, Digvijay Nagar, Ahmedabd, vide Show Cause Notice F. No. STC/15-54/OA/2020 dated 28.09.2020.

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

By Regd. Post AD./Hand Delivery  
F.No.STC/15-54/OA/2020.

Date: .11.2020.

To  
M/s. V-Logistics Services,  
100, Laxminagar Row House,  
Nr Bank Of Baroda,  
Kaligam, Sabarmati, Digvijay Nagar, Ahmedabad

Copy to:

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