



<p>T017_आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN- 20230564WT0000832678

फा.सं./F.No. STC/15-119/OA/2021

आदेश की तारीख/Date of Order :- 25.05.2023

जारी करने की तारीख/Date of Issue :- 25.05.2023

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

सयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 02/JC/LD/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 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 एस टी -4 (ST-4) में दाखिल कर सकता है। इस अपील पर रु. 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 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. 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 एस टी -4 (ST-4) 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।

(1) उक्त अपील की प्रति।

(2) 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 रु. 5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form एस टी -4 (ST-4) 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:

(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. STC/15-119/OA/2021 dated 23.04.202 issued to M/s Skybulkar Cargo Movers P. Ltd., Ahmedabad, Gujarat-382481.



BRIEF FACTS OF THE CASE :

M/s. Skybulkar Cargo Movers P. Ltd, W - 102, Vandematram Prime, Nr.Vandematram City, Gota, Ahmedabad, Gujarat - 382481 (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No. AAVCS4752RSD001 and was engaged in providing Taxable Services.

2. On going through the third party CBDT data for the Financial Year 2015-16 and 2016-17, it was observed that the Assessee had declared less taxable value in their Service Tax Return (ST- 3) for the F.Y. 2015-16 and 2016-17 as compared to the Service related taxable value they have declared in their Income Tax Return (ITR)/ Form 26AS, the details of which are as under:

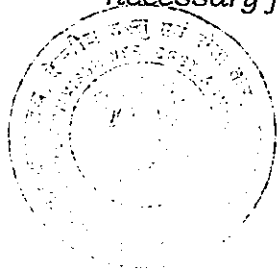
Amt. in Rupees

Sr. No.	F.Y.	Taxable as per ST-3 returns	Gross Receipts Services (Value from ITR/26AS)	Diff. Between Value of Services from ITR/26AS and Gross Value in Service Tax Provided	Resultant Service Tax short paid
1	2015-16	0/-	40065967/-	40065967/-	5809565/-
2	2016-17	0/-	77665167/-	77665167/-	11649775/-
TOTAL					17459340/-

3. Section 68 of the Finance Act, 1994 provides that 'every person liable to pay service tax shall pay service tax at the rate specified in Section 66/66B ibid in such a manner and within such period which is prescribed under Rule 6 of the Service Tax Rules, 1994. In the instant case, the said assessee had not paid service tax as worked out as above in Table for Financial Year 2015-16 and 2016-17.

4. No data was forwarded by CBDT, for the period 2017-18 (upto June-2017) and the assessee had 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 2017-18 (upto June-2017). With respect to issuance of unquantified demand at the time of issuance of SCN, Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by the CBEC, New Delhi clarifies 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."



5. As per Section 70 of the Finance Act 1994, every person liable to pay service tax is required to himself assess the tax due on the services provided/received by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all material facts in their service tax returns (ST-3 Returns). The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. In this case, it appeared that the said service provider had not assessed the tax dues properly, on the services provided by him, as discussed above, and failed to file correct ST-3 Returns thereby violated the provisions of Section 70(1) of the act read with Rule 7 of the Service Tax Rules, 1994.

6. Further, as per Section 75 *ibid*, every person liable to pay the tax in accordance with the provisions of Section 68 *ibid*, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest. Since the service provider had failed to pay their Service Tax liabilities in the prescribed time limit, they are liable to pay the said amount along with interest. Thus, the said Service Tax is required to be recovered from the assessee along with interest under Section 75 of the Finance Act, 1994.

7. In view of above, it appeared that the Assessee had contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules, 1994 in as much as they failed to pay/ short paid/ deposit Service Tax to the extent of Rs.1,74,59,340/-, by declaring less value in their ST-3 Returns vis-a-vis their ITR / Form 26AS, in such manner and within such period prescribed in respect of taxable services received /provided by them; Section 70 of Finance Act 1994 in as much they failed to properly assess their service tax liability under Rule 2(l)(d) of Service Tax Rules, 1994.

8. It has 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 2015-16 and 2016-17. The Government has from the very beginning placed full trust on the service providers and accordingly measures like self-assessment etc, based on mutual trust and confidence are in place. From the evidences, 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. 1,74,59,340/-. It appeared that the above act of omission on the part of the Assessee resulted into nonpayment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 with intent to evade payment of Service tax to the extent mentioned hereinabove. Hence, the same appeared to be recoverable from them under the provisions of Section 73(1) of the Finance Act, 1994 by invoking extended period of time, along with interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994. Since the above act of omission on the part of the Assessee constitute offence of the nature specified under Section 78 of the Finance Act, 1994, it appeared that the Assessee had rendered themselves liable for penalty under Section 78 of the Finance Act, 1994.

9. The said assessee was given an opportunity to appear for pre show cause consultation. The pre show cause consultation was fixed on 22.04.2021 but the said assessee did not appear for the same.

10. Therefore, a Show Cause Notice bearing F.No.STC/15-119/OA/2021 dated 23.04.2021 was issued to M/s.Skybulkar Cargo Movers P. Ltd. called upon them to show cause as to why:

- (i) The demand for Service tax to the extent of Rs 1,74,59,340/- short paid /not paid by them in F.Y. 2015-16 and 2016-17, should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994;
- (ii) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;
- (iii) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.
- (iv) Penalty under Section 77(2) of the Finance Act, 1994 should not be imposed on them for the failure to assess their correct Service Tax liability and failed to file correct Service Tax Returns, as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

DEFENCE REPLY

11. The assessee vide letters dated 18.04.2023 and dated Nil (received on 10.04.2023) stated that they are proprietorship firm and was doing transportation business and have provided their vehicle under hiring of vehicle services. Vide entry No.22 of Notification No.25/2012 dated 20.06.2012 the services to a goods transport agency is exempted from service tax. They further stated that they have provided transportation services under GTA service and service tax paid by RCM basis. They have also filed STR for the FY 2015-16 and April to Sept.2016-17 and enclosed copy thereof, filed copies of financial statement for the FY 2015-16 & 2016-17, Form 26AS for the FY 2015-16 & 2016-17. They are providing GTA services and the service receiver is liable to pay service tax under RCM as per Notification No.30/2012 dated 25.06.2012.

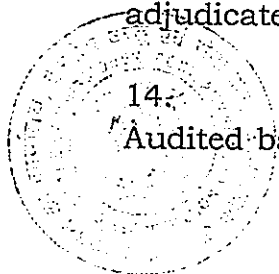
PERSONAL HEARING

12. In the instant case, Personal Hearing was granted to the assessee on 31.03.2023 and Shri Bharatkumar K Desai, Partner, appeared for P.H. He submitted written submissions during the P.H and requested time till 10.04.2023 to submit further details. Accordingly they submitted further details on 10.04.2023 and also requested to decide the SCN on merits.

DISCUSSION AND FINDINGS

13. The proceedings under the provisions of the Finance Act, 1994 and Service Tax Rules, 1994 framed there under are saved by Section 174(2) of the Central Goods & Service Tax Act, 2017 and accordingly I am proceeding to adjudicate the SCN.

14. I have carefully gone through the SCN, reply to SCN, copies of Audited balance sheet, Form 26AS, and submission made by the assessee in



reply to the show cause notice and also during the course of personal hearing. In the present case, the assessee is providing Goods Transport Agency services for which they have obtained ST Registration No.AAVCS4752RSD001 and Show Cause Notice was issued to the assessee demanding Service Tax of Rs.1,74,59,340/- for the financial year 2015-16 and 2016-17 on the basis of data received from Income Tax authorities. The said Service Tax demand has been issued on the basis of difference with regards to total value for ITR/TDS and gross value provided in STR for the year 2015-16 and 2016-17. The Show Cause Notice alleged non-payment of Service Tax, charging of interest in terms of Section 75 of the Finance Act, 1994 and penalty under Section 76, 77 and 78 of the Finance Act, 1994.

15. Prior to the introduction of Negative list w.e.f. 1.7.2012, various services were classified according to the different category of services. Further after introduction of negative list with effect from 01.07.2012, service has been defined as:

(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

- (a) an activity which constitutes merely,—*
 - (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or*
 - (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the constitution or*
 - (iii) a transaction in money or actionable claim.*
- (b) A provision of service by an employee to the employer in the course of or in relation to his employment.*
- (c) fees taken in any court or tribunal established under any law for the time being in force.*

From the definition it is evident that any activity carried out by any person to another person for any consideration is covered under the above definition of service. Further the term "taxable service" is defined under Section 66B(51) of the Finance act, 1994 as under:

(51) taxable service means any service on which service tax is leviable under Section 66B.

It is clear that the service tax is levied under Section 66B of the Finance Act, 1994 which reads as under:

Section 66B : Charge of service tax on and after Finance Act, 2012- There shall be levied a tax (hereinafter referred to as the service tax) at the rate fourteen percent on the value of all services other than those services specified in negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed"

16. According to which service tax is levied on all services other than those specified in negative list (Section 66 D of Finance act, 1994) in the taxable territory by one person to another. In this context the services covered

under Negative list, defined in Section 66D (inserted by the Finance Act, 2012 O.e.f. 1-7-2012), comprise of the following services viz.,

SECTION 66D. Negative list of services.— The negative list shall comprise of the following services, namely :—

(a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere—

- (i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;
- (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- (iii) transport of goods or passengers; or
- (iv) Any service, other than services covered under clauses (i) to (iii) above, provided to business entities;

(b) services by the Reserve Bank of India;

(c) services by a foreign diplomatic mission located in India;

(d) services relating to agriculture or agricultural produce by way of—

- (i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or [* * *] testing;
- (ii) supply of farm labour;
- (iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;
- (iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
- (v) loading, unloading, packing, storage or warehousing of agricultural produce;
- (vi) agricultural extension services;
- (vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;

(e) trading of goods;

(f) [****].;

(g) selling of space for advertisements in print media;

(h) service by way of access to a road or a bridge on payment of toll charges;

(i) betting, gambling or lottery; Explanation. - For the purposes of this clause, the expression "betting, gambling or lottery" shall not include the activity specified in Explanation2 to clause (44) of section 65B;

(j) [* * * *]

(k) transmission or distribution of electricity by an electricity transmission or distribution utility; 10

(l) [* * * *]

(m) services by way of renting of residential dwelling for use as residence;

(n) services by way of—

- (i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;
- (ii) inter se sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers;

(o) service of transportation of passengers, with or without accompanied belongings, by—

(i) [* * * *]

(ii) railways in a class other than— (A) first class; or (B) an air-conditioned coach;

(iii) metro, monorail or tramway ,

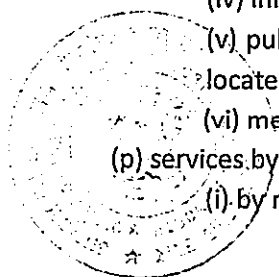
(iv) inland waterways;

(v) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and

(vi) metered cabs or auto rickshaws

(p) services by way of transportation of goods—

(i) by road except the services of— (A) a goods transportation agency; or (B) a courier agency;



(ii) [* * *]

(iii) by inland waterways;

(q) funeral, burial, crematorium or mortuary services including transportation of the deceased.

17. Thus with effect from 01.07.2012, the negative list regime came into existence under which all services are taxable and only those services that are mentioned in the negative list are exempted. It is not disputed that the assessee has provided Goods Transport agency Services and the service provided by them are not mentioned in the negative list given under Section 66D of the Finance Act, 1994. The assessee, in their reply to SCN, are not contending that the taxable nature of service provided by them however they are contending that the services provided by them are exempted by Mega Notification No.25/2012 dated 20.06.2012 & 30/2012 as amended, as they are providing GTA services and the liability to pay service tax is on the service receivers. In view of the above, I find that the services provided by the assessee falls under the category of taxable service prior to introduction of Negative List as well as post introduction of Negative List as the services provided by the assessee does not fall under category of negative list of services under the provisions of Section 66D of the Finance Act.

18. In reply to the show cause notice, the said assessee submitted that they have provided service of transportation of goods by road which covered under GTA and under Reverse Charge Mechanism and also services to other transport agency hence they are not liable to pay service tax in virtue of Noti No.25/2012 dated 20.06.2012. They furnished bifurcation of turnover of service provided to other GTA/RCM where the service receiver is liable to pay service tax as well as value on which service tax has been paid by the service recipient. Now I would like to go through the legal aspects of the taxability of GTA services.

Rule 2(d)(B)(V) of the Service Tax Rules, 1994 provided that;

(d) "person liable for paying service tax", -

(i) (B) in relation to service 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,—

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

(II) 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;

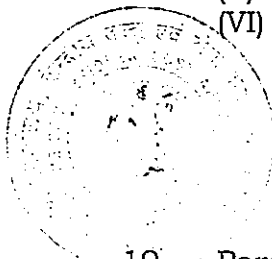
(III) any co-operative society established by or under any law;

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

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

(VI) any partnership firm whether registered or not under any law including association of persons; any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage : Provided that when such person is located in a non-taxable territory, the provider of such service shall be liable to pay service tax.

19. Para 1(A)(ii) and Para II of Notification No. 30/2012-ST dated 20.06.2012 as amended provided that service tax payable on services 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;
- (II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely :-

TABLE

Sl. No.	Description of Service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving service
01	in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road	NIL	100%

20. As per provisions contained in Rule 2(d)(B)(V) of the Service Tax Rules, 1994 read with Notification No. 30/2012-ST dated 20.06.2012 as amended, service tax on GTA service provided to a body corporate established, by or under any law; partnership firm whether registered or not under any law including association of persons; a factory registered under or governed by the Factories Act, 1948 (63 of 1948) and dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made there under is payable in RCM by the service recipient

21. Further, I find that Service Income from Trucks given on Hire to another GTA as means of transport for further use in transportation of goods by road is exempted under Sr. No. 22 (b) of Notification No. 25/2012 dated 20.06.2012 which is as under :

22. *Services by way of giving on hire – (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or (b) to a goods transport agency, a means of transportation of goods;*

According to which the services provided by one GTA to another GTA is exempted from payment of service tax. For the sake of clarity, I would like to discuss the taxability financial year wise.

FINANCIAL YEAR 2015-16

22. On perusal of the SCN, reply to SCN, copy of ST 3 Returns, Form 26AS, financial records and reconciliation statement for the FY 2015-16, I find that the service tax of Rs.58,09,565/- is demanded on the differential value of Rs.4,00,65,967/-. In response to this demand, the assessee stated that they are providing GTA services and service tax is being paid by the service receivers

under Notification No.25/2012 & No.30/2012 and have filed ST 3 Returns also. I have gone thorough the STR for the FY 2015-16 and find that they have declared Rs. 4,55,81,294/- as their gross income under the column RCM. I have also gone through the Form 26AS & SCN according to which a total amount of Rs. 4,00,65,967/- is shown as their gross receipts from services and which service tax has been demanded. On perusal of the income reconciliation statement, I find that they have declared more income in their ST 3 Return than the income credited/paid as shown in their 26AS. From the above factual matrix, and documents submitted by the assessee, I find the difference in the value of service as alleged in the subject SCN is on account of the taxable value of service disclosed in ST-3 returns filed by the assessee being not taken into consideration while computing the service tax liability for FY 2015-16 by the department.

23. As the assessee have already declared more income of Rs. 4,55,81,294/- in their ST 3 Return than the differential value of Rs. 4,00,65,967/-, I find that there is no service tax is recoverable from the assessee on the differential value. Accordingly, I do not find any ground to confirm the demand of Rs. 58,09,565/- demanded on the differential value of Rs. 4,00,65,967/- vide the instant SCN for the FY 2015-16 and therefore the same is liable dropped. For the sake of clarity, I reconcile the figures as under:

Sl.No.	Particulars	2015-16
01	Gross value on which service tax demanded as per SCN/26AS	40065967
02	Less: Value declared in their ST 3 returns for the FY 2015-16 as discussed	45581294
05	Difference	(+) 5515327

FINANCIAL YEAR 2016-17

24. On perusal of the SCN, reply to SCN, copy of ST 3 Returns and reconciliation statement for the FY 2016-17, I find that the service tax of Rs.1,16,49,775/- is demanded on the differential value of Rs.7,76,65,167/-.

In this connection, the assessee in their reply to SCN claimed that they have an income of Rs.5,78,23,466/- received from providing GTA services to body corporate therefore the liability to pay service tax falls on the service receiver and therefore they are not liable to pay any service tax on this income. I have also gone through the Form 26AS, ledger accounts, various invoices and other records and find that the assessee has provided services to the tune of Rs. 5,78,23,466/- for the FY 2016-17 to body corporate. As this income is derived from services provided to body corporate as envisaged in Noti.No.30/2012 dated 20.06.2012, I find that the service provider i.e. the assessee is not required to pay any service tax on the said income as the liability to pay service tax falls on the service receiver as per the Notification.

25. Further, the assessee in their reply to SCN further claimed that they have an income of Rs.1,98,41,701/- for the FY 2016-17 and received from GTA services provided to another GTA and therefore the liability to pay service tax not falls on the service provider therefore they are not liable to pay any service tax on this income. I have also gone through the Form 26AS and other

records and find that the assessee has provided services to the tune of Rs. 98,41,701/- for the FY 2016-17 to another GTA. As this income is derived from services provided to another GTA as envisaged in Entry No.22(b) of Noti.No.25/2012 dated 20.06.2012, I find that the liability to pay service tax on this income falls on the service receiver and therefore the assessee, being the service provider is not required to pay any service tax on the said income and therefore the said income is exempted from payment of service tax. Accordingly, I do not find any ground to confirm the demand of Rs. 1,16,49,775/- demanded on the differential value of Rs.7,76,65,167/- vide the instant SCN for the F.Y. 2016-17 and therefore the same is liable dropped. For the sake of clarity, I reconcile the figures as under:

Sl.No.	Particulars	2016-17
01	Gross value on which service tax demanded as per SCN/26AS	77665167
02	Less: Income exempted vide Clause (2) of Noti.30/2012 dt.20.06.2012 under RCM as discussed	57823466
03	Less: Income exempted by way of Entry 22(b) of Noti.No.25/2012 dt.20.06.2012 services to another GTA	19841701
04	Difference	0

26. On perusal of the records of the case and the above reconciliation statement for the year 205-16 & 2016-17, I find that the service tax on the entire income is to be paid by the service recipient in view of Notification No.25/2012 dated 20.06.2012 & Noti.No.30/2012 dated 20.06.2012 as discussed above and therefore they are not liable to pay any service tax on the said income as the same is out of the ambit of service tax. Accordingly, I hold that the demand service tax of Rs.1,74,59,340/- is not sustainable and therefore required to be dropped. Further, on perusal of SCN, I find that the SCN has not questioned the taxability on any income other than the value difference in ITR & STR for the years under reference, I therefore refrain from discussing the taxability on other income other than the said income.

27. Further, as mentioned in the SCN, I find that the levy of Service Tax for the financial year 2017-18 (Up to June 2017), which was not ascertainable at the time of issuance of subject SCN, if he same was to be disclosed by the Income Tax department or any other source/agencies, against the said assessee, action was to be initiated against assessee under proviso to Section 73(1) read with master Circular No. 1053/02/2017-CX dated 10.03.2017, the service tax liability was to be recovered from the assessee accordingly, I however, do not find any charges leveled for the demand for the year 2017-18 (Up to June 2017), in charging para of the SCN, hence I refrain from discussing the taxability of any income for the period 2017-18(upto June 2017).

28. In view of the above discussion and findings and also on perusal of SCN, reply to SCN, Form 26AS, ST3 returns, reconciliation statement, submissions made by the said assessee and other documents, I find that service tax demand of Rs. 1,74,59,340/- demanded vide above referred SCN is not tenable in law. Accordingly, I do not consider it necessary to delve on the merits of the case by 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 the need or otherwise for imposing any penalty or interest.

29. In view of the above discussion and findings, I pass the following orders:-

ORDER

30. I hereby order to drop proceedings initiated for recovery of service tax of Rs. 1,74,59,340/- along with interest and penalties against M/s.Skybulkar Cargo Movers P. Ltd vide SCN No. STC/15-119/OA/2021 dated 23.04.2021.



(Lokesh Darnor)

Joint Commissioner
Central GST & Central Excise
Ahmedabad North

By Regd. Post AD./Hand Delivery
F.No.STC/15-119/OA/2021

Date:

To
M/s. Skybulkar Cargo Movers P. Ltd,
W - 102, Vandematram Prime,
Nr.Vandematram City, Gota,
Ahmedabad, Gujarat - 382481

Copy to:

1. The Commissioner of CGST & C.Ex., Ahmedabad North.
2. The D.C/A.C, Division-VII, Central Excise & CGST, Ahmedabad North.
3. The Supdt., Range-IV, Division-VII, C.E & CGST, Ahmedabad North
4. The Supdt (system) CGST, Ahmedabad North for uploading on website.
5. Guard File